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Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

EFRAIN AREIZAGA

Petitioner,

v.

JODY SPICER

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE 13TH JUDICIAL CIRCUIT COURT OF HIILLSBOROUGH COUNTY, STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

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Writ-Prep Express

QUESTION PRESENTED FOR REVIEW

Did the trial court deny the best interest of the child and infringe on the father's constitutional and fundamental rights to due process and the equal protection of the law, guaranteed by the 14th Amendment and the Parental Kidnapping Prevention Act of 1980 (PKPA) 28 U.S.C. § 1738A in his attempt to establish visitation rights with his child in the state of Florida, when the trial court without any objection, argument or pleading excluded a finding of severe alienation of affection, which was conclusively admitted at trial as a matter of law, thereby permitting the mother to relocate the parties' minor child to the state of Texas?

PARTIES TO THE PROCEEDINGS

EFRAIN AREIZAGA, father of the parties' minor child born out of wedlock, and an individual on behalf of himself and a class of all persons similarly situated.

JODY SPICER, mother of the parties' minor child.

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Appendix A A-1

Order from the Second District Court of Appeals denying appellant's motion for rehearing and motion for rehearing en banc or motion to certify question to the Supreme Court, dated May 25, 2005.

Appendix B B-2

Opinion of the Second District Court of Appeal of the State of Florida dated April 15, 2005.

Appendix C C-3

Final Judgment of Paternity by the 13th Judicial Circuit Court for Hillsborough County, Florida, dated December 15, 2003.

Appendix D D-21

Petition for Declaration of Paternity and other Relief and Motion for Temporary Injunction to prevent Removal of the Child(ren) and for denial of Passport Services, and affidavit in support of Motion for Temporary Injunction to Prevent Removal of Children.

[1] Please note that the page reference in the table of appendices refers to individual documents notated by a letter and the page number in a sequential order.

Appendix E E-29

Respondent's Answer to Petition for Declaration of Paternity and other Relief, and Counter-Petition for Paternity and other related Relief.

Appendix F F-35

Petitioner's Amendment to Petition for Declaration of Paternity and Other Relief, filed on November 4, 2002.

Appendix G G-48

Respondent's Answer to Petitioner's Amendment to Petition for Declaration of Paternity and other Relief.

Appendix H H-51

Petitioner's Request for Admissions without attachments.

Appendix I I-66

Affidavit of Expert witness MITCHELL I. KROUNGOLD, Ph.D., exhibit P-22 in Petitioner's motion for Summary Judgment at Trial.

Appendix J J-80

Excerpt of Pre-Trial Conference Transcripts of the Proceedings on

October 16, 2003, Pre-Trial transcript pages T-245 to T-257.

Appendix K K-94

Petitioner's Memorandum for Trial without Attachments.

Appendix L L-97

Respondent's Pre-Trial Memorandum for Trial without attachments.

Appendix M M-102

Excerpt of the Trial Transcripts of the Proceedings on November 19. 2003, pages T-51 to T-54 and T-189 to T-196.

JUDGMENT & OPINIONS ENTERED IN THE CASE

The Second District Court of Appeals (DCA) for the State of Florida issued a non-published per curium affirmed decision without an opinion, see App. B-2. The 13th Judicial Circuit Court rendered a judgment in this case on December 15, 2003, see App. C-3.

BASIS FOR SUPREME COURT JURISDICATION

The trial court for the 13th Judicial Circuit of Hillsborough County, Florida entered a finding in it's judgment, that there was no alienation of affection between the father and the parties' minor child App. C-12, thereby denying the best interest of the child and allowing the parties' minor child to relocate to the state of Texas infringing the father's fundamental right pursuant to the Equal Protection and Due Process Clauses of the 14th Amendment of the United States Constitution, and the father's parental rights under the Parental Kidnapping Prevention Act of 1980 (PKPA) 28 U.S.C. § 1738A. The father EFRAIN AREIZAGA seeks review of this finding of fact on his petition for a writ of Certiorari.

The father filed a timely motion for rehearing and a motion for rehearing en banc or a motion to certify question to the Supreme Court, to the 2nd DCA for Supreme Court, and on May 25, 2005 the 2nd DCA filed on order denying said motions, see App. A-1. The present petition is timely filed under 28 U.S.C. § 2101 (c) and rule 13.3 of this court. This court has jurisdiction under 28 U.S.C. § 1257 and rule 10(c) of this court to review on a petition for a writ of certiorari, a judgment of a state court of last resort, see *Betty v. Brady*, 316 U.S. 455, 458, 461 (1942), *Williams v. Florida*, 399 U.S. 78, 80 (1970).

A. Adequacy of State Grounds and Issue of Great-Importance

Pursuant to the Florida Constitution Article V § (4)(b)(1), the father has a right to appeal final judgments or orders from trial courts, see *Bain v. State of Florida*, 730 So.2d 296 (Fla. 2nd DCA 1999). It is fundamental black letter law and practice for the Florida appellate courts to issue per curiam dispositions affirming trial court order without written opinion occurs when points of law raised are so well settled that further writing would serve no useful purpose, and is not indication that appellate court has overlooked authority cited by appellant, see *Elliott v. Elliott*, 648 So.2d 137 (Fla. 4th DCA 1994). The father was denied appellate review, arbitrary and totally unrelated to any possible state purpose, when the trial court infringed on the father's fundamental rights of visitation with his daughter under the PKPA, and the due process and equal protection clause which requires strict scrutiny pursuant to the 14th Amendment of U.S. Constitution.

States and not federal court are required to interpret the provisions under the Parental Kidnapping Prevention Act of 1980 (PKPA) 28 U.S.C. § 1738A, the state trial court and the appellate court of last resort were silent as to this issue in their judgment. Federal courts do not have jurisdiction to interpret provisions of the Parental Kidnapping Prevention Act including determination of which of two state courts had jurisdiction over custody dispute, disagreeing with *Flood v. Broaten*, 727 F.2d 303 (3rd Cir.); *Hickey v. Baxter*, 800 F.2d 430 (4th Cir.); *McDougald v. Jensen*, 786 F.2d 1465 (11th Cir.); *Heartfield v. Heartfield*, 749 F.2d 1138 (5th Cir.). See *Rogers v. Platt*, 814 F.2d 683 (1987). This is so because the trial courts are in the best position to determine the best interest of the child. And the courts through out this country have consistently failed to enforce the rights of a parent under the PKPA, when a residential custodial parent of a

child born out of wedlock has relocated to another state over the objections of the non-custodial parent, after the residential custodial parent was served with a custody suit to determine custody and visitation rights in the state of residency. In *Leeds v. Adamse*, 832 So.2d 125, 128 (Fla. 4th DCA 2002) the appellate court has noted a "catch 22" scenario and legal loop hole as follows:

> "This "catch 22" scenario has been reduced by the recent amendment of section 61.13. It now provides that refusal to honor non-custodial parent's visitation rights without just cause will support a modification of custody. But, the non-custodial parent must still show that the modification is in the best interest of the children § 61.13(4)(c)5 Fla. Stat. (2001). Boiled down to its essentials, under existing law, a custodial parent can conceal his or her intent to relocate the children, then after entry of the final judgment relocate to a place for enough away to effectively deny visitation to the non-custodial parent, and leave the non-custodial parent with the uphill battle."

This is an issue of great importance, which the U.S. Supreme Court should decide since it affects the best interest of the child and the fundamental rights of every parent regardless of what state they reside.

Function of equal protection analysis is to measure validity of classification created by statue and threshold question is whether state infringes on fundamental interest or discriminates against suspect class and if it does either, court will subject statutory scheme to strict scrutiny test, but if fundamental interest is not in jeopardy or suspect class is not involved, court determines whether classification is rationally related to objectives of the regulation, see *Heisse v. State of Vermont*, 519 F.Supp. 36 (1980). The 14th Amendment's due process clause has a substantive component that "provides

heightened protection against government interference with certain fundamental rights and liberty interest," see *Troxel v. Ganville*, 530 U.S. 57 (2000); *Washington v. Glusksberg*, 521 U.S. 702, 720 (1997), including parent's fundamental right to make decisions concerning the care, custody and control of their children, see *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). Strict judicial scrutiny is appropriate in those situations in which a constitutional protected right is infringed, see *Akron Center for Reproductive Health, Inc. v. City of Akron*, 651 F.2d 1198 (1981). Where the state provides means of appeal, it cannot put limitations on it which are discriminatory, arbitrary, and totally unrelated to any possible state purpose, see *Compton v. Naylor*, 392 F. Supp. 575 (1975). The appeals process, which is created must be exercised without discrimination, see *National Union of Marine Cooks and Stewards v. Arnold*, 348 U.S. 37, (1954).

Strict scrutiny is inadequate and state ground is untenable, when the trial court and the court of last resort has failed to render an opinion regarding the father's fundamental rights under federal law. State ground to be adequate, must also be a tenable one. In other words, Supreme Court Review cannot be evaded by reliance on a state ground, "so certainly unfounded that it properly may be regarded as essentially arbitrary, or a mere device to prevent a review of the decision upon a federal question," see *Enterprise Irrigation District v. Canal Co.*, 243 U.S. 157, 164 (1917); *Ward v. Love County*, 253 U.S. 17, 22 (1920); *Postal Tel. Cable Co. v. Newport*, 247 U.S. 464, 475-76 (1918); *Lawrence v. State Tax Commission*, 286 U.S. 276, 282 (1932). This principle that untenable state grounds may not preclude review of the federal questions has had most frequent application in situations where a rule of state pleading or procedure has been used unreasonably to avoid a decision relative to federal rights, *Davis v. Wechsler*, 263 U.S. 22, 24 (1923); *NAACP v. Alabama*, 357 U.S. 449, 455-58 (1958), 377 U.S. 288 (1964).

B. State Court Finding of Fact

The Supreme Court will review a state court's finding of fact where a federal right has been denied as a result of a finding shown by the record to be without evidence to support it, or where a conclusion of law as to a federal right and a finding are so intermingled as to make it necessary, in order to pass upon the federal question, to analyze the facts, see *Fiske v. Kansas*, 274 U.S. 380, 385 86 (1927); *Creswill v. Knights of Pythias*, 225 U.S. 246, 261 (1912); *Sterling v. Constantin*, 287 U.S. 378, 398 (1932). The Supreme Court has granted certiorari to review matters of evidence in cases where decisions seem shockingly wrong and thus present substantial due process questions, see *Thompson v. City of Louisville*, 362 U.S. 199 (1960); *Garner v. Louisiana*, 368 U.S. 157, 163 (1961); *Washington v. United States*, 357 U.S. 348 (1958). Where a possible due process violation is apparent on the particular facts of a case, the United States Supreme Court is empowered to consider the due process issue, see *Wood v. Georgia*, 450 U.S. 261, (1981). If the Supreme Court is to meet its constitutional responsibilities, it cannot permit itself to be "completely bound by state court determination of any issue essential to decision of a claim of federal right, else federal law could be frustrated by distorted fact finding," see *Stein v. New York*, 346 U.S. 156, 181 (1953). Basically, the Court indulges in this kind of fact review and determination only to prevent serious erosion of federal rights and grave miscarriage of justice. Moreover, a state court cannot deprive a litigant of a federal right by omitting to pass on basic questions of fact. In that situation the Supreme Court will examine the record itself to determine "what facts reasonably might be and presumably would be found there from by the state court," see *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 703 (1945); *Merchants Nat. Bank v. Richmond*, 256 U.S. 635, 638 (1921); *Carlson v. Washington*, 234 U.S. 103, 105 (1914). Or the

court may leave open the factual issue, allowing the state court to make the necessary findings on remand reversal for error of law, see *Merchant's Nat. Bank v. Richmond*, supra at 638.

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The Equal Protection and Due Process Clauses of the 14th Amendment of the United States Constitution, the Parental Kidnapping Prevention Act of 1980 (PKPA) 28 U.S.C. § 1738A, rule 1.370 of the Florida Rules of Civil Procedures – Request for Admissions, Florida State Statue § 90.104 – Rulings on Evidence.

STATEMENT OF THE CASE

This case is a paternity suit initiated by the father EFRAIN AREIZAGA, on April 7, 2000, in an effort to establish visitation rights with the parties' minor child in the state of Florida. The suit contained a petition for declaration of paternity, a motion for temporary injunction to prevent removal of the child and for denial of passport services, and an affidavit in support for temporary injunction and other documents, see App. D-21. The mother was served on April 8, 2000 with the paternity suit and other documents while still a resident of the state of Florida. The mother admitted in her answer to the petition for declaration of paternity and other relief filed on May 1, 2000, that she had intended to relocate to Texas prior to her relocation, see App. E-29. In addition the mother stated in her counter-petition for paternity "that following the entry of a domestic violence injunction against the father, the mother, together with the minor child, relocated to Texas, see App. E-31.

The father amended his petition for declaration of paternity and other relief on November 4, 2002. Where said

amendment include issues of alienation of affection, failure to provide telephonic communications, video conferencing, visitation, intrinsic and extrinsic fraud on the court, change of the parties' hyphenated surname, relocation and/or primary residential custody of the parties' minor child, see App. F-35.

On November 5, 2002 the mother filed her response and answer to the father's amendment to petition for Declaration of Paternity and Other relief. The following are some of the mother's undisputed admissions in said response and answer to the father's amended petition, which the mother conclusively admitted, see App. G-48:

> **Admission #22:** "That the respondent (mother) has repeatedly testified in court and used as a defense that she lacks the financial resources to pay her share of travel expenses..., see App. G-49."
>
> **Admission #24**: "That petitioner (father) filed numerous motions for contempt against the respondent (mother), where respondent had repeatedly failed to provide visitation, telephonic communications, video-conferencing, and engaged in communications that tend to undermine and destroy petitioner's attempt to establish a relationship between the parties' minor child and petitioner, App. G-49."
>
> **Admission #26**: "That the respondent (mother) has repeatedly failed to use petitioner's surname, AREIZAGA, in all documentation referencing the parties' minor child while living in the state of Texas. That in addition, the respondent has admitted and testified the same in open court, see App. G-49."

On February 21, 2003, the father filed Petitioner's Request for admissions along with supporting evidentiary documentation. The facts and all matters within the father's request for admissions where conclusively admitted by the mother, pursuant to rule 1.370 of the Florida Rules of Civil Procedures (2003) due to the mother's failure to respond. The following are some of the undisputed facts and matters admitted by the mother in the father's request for admissions, see App. H-51:

> **Admission #3:** "That you (mother) were aware that petitioner was seeking to establish legal visitation rights with the parties' minor child in the state of Florida, and to prevent you (mother) from removing the parties' minor child from the jurisdiction of Florida, prior to your relocation to Texas, see App. H-52."
>
> **Admission #4:** "That you (mother) were present and still living in the state of Florida on April 8, 2000, when you (mother) were served with petitioner's summons, temporary injunction to prevent you from moving to Texas and other relief, see App. H-52."
>
> **Admission #11:** "That you (mother) failed to attend a mediation conference for visitation purposes, on July 12, 2000, thereby hindering petitioner's efforts to visit with the parties' minor child, see App. H-53."
>
> **Admission #15:** "That between January and September of 2000, you (mother) made absolutely no effort to establish visitation and

communication between the petitioner and the parties' minor child, see App. H-54."

Admission #16: "That between January and September of 2000, you (mother) failed to establish, facilitate, foster and nurture a meaningful and Loving relationship between the petitioner and the parties' minor child, see App. H-54."

Admission #18: "That you (mother) failed to use as a surname "Areizaga-Spicer" when referring to the parties' minor child, see App. H-54."

Admission #20: "That you (mother) failed to correct, instruct and reinforce to the parties' minor child that petitioner is her real father during two telephonic conversations using speaker phone on April and May of 2002, see App. H-55."

Admission #21: "And that this failure to correct, instruct and reinforce to the parties' minor child that petitioner is her real father, has persisted prior to petitioner's filing of his motion for contempt filed on October 2001 and heard on November 1, 2001, see App. H-55."

Admission #22: "That you (mother) repeatedly failed, for whatever reason, to provide petitioner with the following court ordered visitation dates: September 21-24, 2001, November 23-26, 2001, December 2001, February 2002 to July 2002, September

to November 28 (less than half a day), and December 2002 to Tampa Florida as pursuant to court orders filed on October 17, 2000, March 1, 2002 and October 17, 2002, see App. H-55."

Admission #23: "That pursuant to a court order you (mother) failed to provide petitioner repeatedly with daily telephonic communications, see App. H-55."

Admission #24: "That pursuant to a court order, you (mother) failed to provide petitioner repeatedly with video conferencing, see App. H-55."

Admission #25: "That you (mother) have intentionally and willfully led the parties' minor child to believe that petitioner is not her real father, see App. H-56."

Admission #61: "That you (mother) spend and/or received funds for numerous plastic surgeries for the following body parts including, but not limited to your nose, eyes, lips, and breasts, see App. H-61."

Admission #70: "That although you (mother) had numerous sources of funds you failed to provide and/or allocate any funds for travel and visitation between the petitioner and the parties' minor child see App. H-62."

Admission #79: "That you (mother) have intentionally with malice and in bad faith

> alienated the affections between the petitioner and the parties' minor child, see App. H-64."

During the pre-trial conference on October 16, 2003 the trial court was aware of the father's request for admissions and the undisputed facts and matters contained in the same, which was conclusively admitted by the mother prior to trial, see App. J-82. The mother's attorney RONALD REED admitted not filing a response and that he needed to file a motion to allow the mother to respond to appellant's request for admission, but the mother never filed said motion prior to trial, see item D(5) in App. L-99. In addition, the mother's attorney indicated that appellant's request for admissions was supported by the record when he stated that "If as Mr. Areizaga says, his request for admissions are grounded on record evidence, transcripts, there's no prejudice at all, because he's got that. **He's got the information,**" see App. J-83. Moreover, the trial court stated during pretrial conference the following:

> "If you want to file a motion then you can. But, I'm not telling you that I'm going to relieve you from the admissions. I don't what good cause you, other than what you have stated. And at this point, I don't know what the 85 admissions requested are. However, if some of those admissions, since this is at a very late date, would prejudice Mr. Areizaga, then I will tell you that my gut reaction would be that I am not going to shift the prejudice from Ms. Spicer to Mr. Areizaga and create a problem for him. Unless we fashion some other kind of remedy here, under the circumstances, and trying to be as even-handed as possible – and I understand what you're saying. But on the other hand, you

> know, I can't prejudice Mr. Areizaga because of the fact that this slipped through the crack. It didn't slip through the crack on his side, but rather on your side. So I can't prejudice him because that occurred, see App. J-84."

In addition, the trial court asked the father how many witnesses the father had for trial and what was the scope of their testimony, see App. J-88. The father responded that he had twenty witnesses which included the father, mother, several pastors, mother's uncle, mother's roommate, father's sister and her husband, investigator, psychologist ..., see App. J-88. The father also indicated to the trial court that the mother's roommate ANNA PITT would be impeaching the testimony of the mother, regarding the date of the mother's relocation which was to hinder my visitation schedule an element of alienation of affection and that the law allowed it, see App. J-91. The trial court responded, "It doesn't make any difference, see App. J-90" when referring to impeaching the mother's testimony regarding the mother's relocation.

Moreover, the trial court placed undue burden on the father by restricting witnesses, when the trial court stated, "So I'm not going to listen. I'm not going to allow witnesses to testify that have nothing relevant, pertinent to say about the issues in this case. And I will repeat the issues in this case are relocation, custody, visitation, child support, and child support arrearage..., see App. J-91"

On October 16, 2003 the father filed a memorandum for trial with attachments, which included the request for admissions and a request for a 2-day trial to properly address the issues of alienation of affection for trial, see App. K-94. On October 20, the mother filed their pre-trial memorandum with attachments indicating that that it was estimated that a 3-day trial was needed. On October 20, 2003 the trial court rendered an order continuing trial and rescheduling trial, where the court allowed only a one-day trial, see App. L-97.

During trial on November 19, 2003, the father stated that the request for admissions have been admitted, and would reduce the number of witnesses and documentation that is needed to prove my case pursuant to pre-trial order. At trial the father's request for admission (Petitioner's exhibit #9) was received into evidence by the court, without any objections by the mother, see App. M-104. During closing arguments the father stated "that the facts in this case conclusively admitted pursuant to rule 1.370 of the rules of Civil Procedures regarding any matter in petitioner's request for admissions are conclusively established and cannot be withdrawn and amended if they are supported by the record, see App. M-107." In addition, the father continued to state in his closing arguments elements of alienation of affections conclusively admitted and un-refuted by the mother by arguing the following:

> "That the respondent JODY SPICER has intentionally with malice and in bad faith alienated the affection between the petitioner and the parties' minor child by engaging in the following acts or omissions: failure to provide telephonic communications pursuant to court order; failure to provide visitation; failure to provide video conferencing; led the parties' minor child to believe that I was not the real father; let the minor child believe that her surname did not include "AREIZAGA;" relocated to the state of Texas after being properly served with petitioner's paternity suit to hinder my visitation effort; failure to allow petitioner to participate in any child-rearing decisions concerning the parties' minor child due to respondent's failure to communicate with the petitioner, App. M-107 to M-108."

The final judgment in this case, specifically found that there was no alienation of affection, which was contrary to the mother's un-refuted admissions pursuant to rule 1.370 of the Florida Rules of Civil Procedures (2003). As a direct consequence, of the court's failure to consider the mother's un-refuted admissions of alienation of affection elements during trial, appellant filed a motion for a new trial. But, the trial court denied said motion for a new trial, and the father appealed said judgment to the 2nd District Court of Appeals.

REASONS FOR GRANTING THE PETITION

This petition addresses the issue of the trial court's fundamental error of law and its departure from the essential requirements of the law, by restricting the father's witnesses at trial and then failing to consider alienation of affection of the parties' minor child, admitted and un-refuted by the mother, affecting the best interest of the child and the father's fundamental and constitutional rights to a fair trial.

The Parental Kidnapping Prevention Act of 1980 (PKPA) 28 U.S.C. § 1738A, was enacted to establish a national system for locating parents and children who travel from one jurisdiction to another for purposes of concealment in connection with custody dispute. It also establishes national standards by which courts can determine their jurisdiction to decide custody disputes. Although the PKPA only applies directly to modification proceedings, it also indirectly governs initial custody determinations, see 28 U.S.C.A. § 1738A, *Atkins v. Atkins*, 823 S.W.2d 816 (1992). The stated purpose of the PKPA are almost identical to those of the UCCJA, see Florida Statues § 61.1304. The PKPA discourages continuing interstate controversies over child custody in the interest of greater stability of home environment and secure family relationships for the child, 28 U.S.C. § 1738A. The PKPA, 28 U.S.C. § 1738A, was

enacted by the United States Congress as a nationwide means of uniformly enforcing **parental responsibilities,** and visitation decrees, see Parental Kidnapping Prevention Act of 1980, see Pub. L. 96-611. Florida Statue § 787.04, was enacted to address the concerns of the PKPA, where the subsection (2) of said statue states that -- it is unlawful for any person, with criminal intent (the mother was never adjudicated to be the primary residential parent upon service of the paternity suit), to lead, take, entice, or remove a minor beyond the limits of this state, during the pendency of any action or proceeding affecting custody of the minor child, after having received notice as required by law of the pendency of the action or proceeding, without the permission of the court in which the action or proceeding is pending. Divorced father would not be deprived of his ability to protect his rights of visitation in North Dakota courts following children's move out of state with their mother and stepfather to California in light of fact that both used the Uniform Child Custody Jurisdiction Act and were subject to the Federal Parental Kidnapping Protection Act, see 28 U.S.C.A. § 1738A, *Hedstrom v. Berg,* 421 N.W.2d 488 (1988). The Federal Parental Kidnapping Prevention Act contains no precondition that there be a wrongdoing or kidnapping for the Act to be operable, see 28 U.S.C.A. § 1738A, *Debra S. v. Roger S.,* 455 N.Y.S.2d 723 (Family Court 1982).

The mother JODY SPICER unlawfully relocated the parties' minor child to the state of Texas, after being properly noticed with appellant's paternity suit, without the trial court's permission/order, and without being properly adjudicated as the parent with primary residential custody in this initial child custody proceeding. The mother's decision to relocate to the state of Texas with the knowledge that the father wanted to establish visitation rights in the state of Florida, without court order, and without being adjudicated as the primary residential custodial parent was a malicious

act done in bad faith to hinder the father's visitation rights with the parties' minor child. The PKPA and Florida State Statue § 787.04 protects the right of visitation by the father until the relocation issue can be properly established in court. Moreover, there is no constitutional right of privacy protecting the mother from relocating to the state of Texas as a child rearing decision absent agreement by other parent, see *Spence v. Stewart*, 705 So.2d 996 (Fla. 4th DCA 1998).

Despite advent of modern communications and means of travel, restriction of removal of children to another state by custodial parent may be necessary to preserve non-custodial parent's rights, and courts retain power to restrict movement of children of divorced parents out of state, out of country, or out of county, see *McIntyre v. McIntyre*, 452 So.2d 14, 15 (Fla. 1st DCA 1984). A custodial parent's request for relocation should ordinarily be approved so long as custodial parent desires to move for well intentional reason and founded belief that relocation is best for well-being of that parent and child, rather than from vindictive desire to interfere with visitation rights of the other parent, see *Russenberger v. Russenberger*, 669 So.2d 1044 (Fla. S.Ct. 1996). The relationship between parent and child is constitutionally protected, and a natural parent, absent finding that he or she is unfit, has due process right to maintain a relationship with his or her children, see *Quillion v. Walcott*, 434 U.S. 246, 255. The parent has natural legal right to enjoy custody, fellowship, and companionship of his offspring limited only by rule that the ultimate welfare of the child controls, see *Kent v. Burdick*, 591 So.2d 994 (Fla. 1st DCA 1991).

The best interest of the child is the primary concern in the initial child custody determination, as well as for the relocation of the primary residential custodial parent. Once the paternity suit was filed, it challenged the mother's right to relocate absent the court's approval, and it also challenged the mother's assumption as the primary custodial parent.

For a parent to alienate the affections of a minor child, in the early critical developmental stages of their lives, against the non-custodial parent is not in the best interest of the child. If a primary residential custodian interferes with the other parent's visitation rights, and there are aggravating circumstances such as alienation of affection or a vengeful attitude by the primary residential custodian, the court may award a change in the primary residential custodian, see *Berlin v. Berlin*, 386 So.2d 577, 580 (Fla. 3rd DCA 1980). Florida Statue § 827.01 defines child abuse as the intentional infliction of mental injury on a child. Moreover, aggravated child abuse statue includes not only willful acts of commission, but also willful acts of omission and neglect that cause un-necessary or unjustifiable pain or suffering to a child, see *State v. Carwile*, 615 So.2d 748 (Fla. 2nd DCA 1993). Severe alienation of affections for a prolong period of time (4 years) constitutes mental injury, which is defined by Florida Statue § 39.01(44) injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in his ability to function within his normal range of performance and behavior, see *State v. DuFresne*, 782 So.2d (Fla. 4th DCA 2001). The mother has intentionally subjected the parties' minor child to mental injury in the form of severe alienation of affection, affecting the child's normal development as well as her psychological and emotional health.

The mother's acts and omissions supported by record as cited in the statement of facts reflects a history of alienation of affections, which was conclusively admitted and un-refuted at trial by the mother in her responses to the father's amended petition and request for admissions. Rule 1.370 of the Florida Rules of Civil Procedure (2003) regarding any matter in petitioner's request for admissions are conclusively established and cannot be withdrawn and/or amended if supported by the record. The mother was served with said request on February 21, 2003 and a court order staying all

discovery proceedings in this case, was rendered on March 25, 2003, extended the deadline to July 2, 2003 providing the mother with an additional 95 days to respond to appellant's request for admissions, see App. J-82. Requests were deemed admitted upon failure to file a timely response, see *The Florida Bar v. Tobin*, 674 So.2d 127 (Fla. S.Ct. 1996); *Hooten v. Lake County*, 177 So.2d 696 (Fla. 2nd DCA 1965); *Graham v. Eisele*, 245 So.2d 682 (Fla. 3rd DCA 1971). An admission in a pleading is accepted as fact without dispute or supporting evidence at trial, see *Lutsch v.Smith*, 397 So.2d 337 (Fla. 1st DCA 1981). Moreover, an admission obtained in a response to admit is conclusively established, and does not have to be introduced into evidence, since the admission would not go to a contested issue of fact. Id.

The severe alienation of affection between the father and the parties' minor child, which was intentionally caused by the mother, affected the parties' minor child's normal development, as well as her psychological and emotional health. A court may order a change in primary residential responsibility to protect and promote the emotional health of the child, see *Mulford v. Sullivan*, 467 So.2d 1093, 1094 (Fla. 1st DCA 1985); *Goldstein v. Goldstein*, 264 So.2d 49, 52 (Fla. 3rd DCA 1972). Moreover, the father's expert witness and licensed psychologist, Dr. MITCHELL KROUNGOLD, Ph.D., reviewed the record and corroborated severe alienation of affection when reviewing the following: testimonies, court orders, recordings, and in his expert opinion there was high probability of severe parental alienation of affection when one parent unilaterally removes the child out of state, and additional indicators as follows: failure to attend mediation hearing, failure to provide visitation, failure to use surname of "AREIZAGA" in all documents regarding the child, reviewed of two telephonic calls of father and child on April 19, 2002, and May 29, 2002, was part of the documentation in the father's motion for summary judgment, see App. I-66.

A petition for a modification of a custody order carries an extraordinary burden of proof, since this case was an initial custody determination, the alienation of affection was extremely significant finding in the best interest of the child with a much less burden of proof. The father has struggle for over three years enduring bankruptcy, loss of business, and extreme financial hardship during numerous proceeding in order to establish a normal relationship with the parties' minor child, see App. M-110. "The natural father should not have to go back to court every step of the way before he can establish normal relations with his daughter. This is especially true where the father has struggle for over four years to and through numerous court proceedings just to see his daughter," quoted from *Kent v. Burdick*, 591 So.2d 994, 998 (Fla. 1st DCA 1991).

The final judgment in this case fails to consider the best interest of the child by denying a finding of alienation of affection, which was conclusively admitted and un-refuted by the mother, and supported by the record. Said denial in the court's finding was extremely prejudicial and harmful to the father, since it affected the primary residential custody and relocation determination in the father's paternity suit. Appellate courts have long recognized that a trial court's findings of fact are presumed correct and will not be disturbed on appeal absent a showing that such finding are clearly erroneous or totally without substantial evidentiary support, *Avery Dev. v. Village by the Sea Condo.*, 567 So.2d 447 (Fla. 4th DCA 1990), *Oceanic Int'l Co. v. Lantana Boatyard*, 402 So.2d 507, 511 (Fla. 4th DCA 1981). However, the reviewing court is not bound by the trial court's legal conclusions where those conclusions conflict with established law, *Oceanic*, 402 So.2d 511 (Fla. 4th DCA 1981). The standard of review for the trial judge's factual findings is whether competent substantial evidence supports the judge's ruling, see *Butler v. State*, 706 So.2d 100 (Fla. 1st DCA 1998), *Caso v. State*, 524 So.2d 422 (Fla. S.Ct. 1988),

also see *Brand v. Florida Power Corporation*, 633 So.2d 504 (Fla. 1st DCA 1994), *Vitalis v. Vitalis*, 799 So.2d 1127 (Fla. 5th DCA 2001).

The final judgment, specifically the finding of no alienation of affection, is clearly erroneous and is not supported by competent substantial evidence. In cases tried without a jury, the lower court's findings are entitled to weight of a jury verdict and must not be disturbed unless there is total lack of substantial evidence to support trial judge's findings; however, misinterpretation of legal effect of facts so found can result in reversible error, see *Hamilton v. Title Ins. Agency of Tampa*, Inc., 338 So.2d 569, 570 (Fla. 2nd DCA 1976).

In addition, the court failed to address any evidentiary conflicts, see *McCloskey v. McCloskey*, 359 So.2d 494 (Fla. 4th DCA 1978), *Bildner v. Bildner*, 219 So.2d 749 (Fla. 3rd DCA 1969). The trial court had an opportunity to address this fundamental error of law, which was a departure from the essential requirement of the law, but denied the father's motion for a new trial, see App . The purpose of granting a new trial, "fundamental error" is error, which deprives party of a fair trial, see *Miller v. Affleck*, 632 So.2d 79 (Fla. 1st DCA 1993). Florida Statue § 90.104 (1)(b) (rulings on evidence) states that "A court may predicate error, set aside or reverse judgment, or grant a new trial on the basis of admitted or excluded evidence when a substantial right of the party is adversely affected and when ruling is one excluding evidence, the substance of the evidence was made known to the court by offer of proof or was apparent from the context within which the questions were asked."

Where the prejudicial error found to require a new trial has been injected into the case by the judge himself, trial judge's view of need for corrective action should be accorded additional weight, see *Castlewood International Co. v. LaFluer*, 322 So.2d 520 (Fla. S.Ct. 1976). "The closer an issue comes to being purely legal in nature, the less discretion

a trial court enjoys in ruling on a new trial motion," see *Office Depot, Inc. v. Miller*, 584 So.2d 587, 589 (Fla. 4th DCA 1991). The discretion is significantly reduced when the motion concerns a purely legal question, see *Rety v Green*, 546 So.2d 410 (Fla. 3rd DCA), review denied, 553 So.2d 1165 (Fla. S.Ct. 1989). This is so because an error involving a purely legal question can be as accurately reviewed from an appellant record as from the trial judge's bench, see *Tri-Pak Machinery, Inc. v. Hartshorn*, 644 So.2d 118, 119 (Fla. 2nd DCA 1994).

The trial court, during pre-trial conference, restricted the father's witnesses for trial, and allowed only a one-day trial. This judicial action forced the father to depend solely on the request for admissions, which were conclusively admitted and un-refuted by mother (admissions were entered at trial without any objections). Florida evidence code liberally permits the introduction of evidence to show the bias or motive of a witness, see *Morrison v. State*, 818 So.2d 432 (Fla. S.Ct. 2002), *Gibson v. State*, 661 So.2d 288, 291 (Fla. S.Ct. 1995). Section 90.608(2), of the Florida State Statues states: Any party, including the party calling the witness, may attack the credibility of a witness by showing that the witness is biased. Compulsory attendance of witnesses is vital part of American concept of due process and a fair hearing, see *Drogaris v. Martine's Incorporated*, 118 So.2d 95 (Fla. 1st DCA 1960). Right to present evidence and call witness is a most important due process right of the litigant, and exclusion of testimony of a witness is a drastic remedy which should be invoked only under the most compelling circumstances, see *Fogel v. Mirmelli*, 413 So.2d 1204, 1205 (Fla. 3rd DCA 1982). In any matter involving discretion of trial court, the court does not have the right to disregard established principles and guidelines set forth by law for decision in such matters, see *Peterson, Howell & Heather v. O'Neil*, 314 So.2d 808 (Fla. 3rd DCA 1975). In general, the proceedings in a trial court should be upheld unless it violates

the very essence of a scheme of ordered liberty, whatever difficulty may be experienced in giving to the term "due process of law" a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, it has been said that there can be no doubt of its meaning when applied to judicial proceedings, see *Pennoyer v. Neff*, 95 U.S. 714, 733 (1878). "Due process of law" means course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for protection and enforcement of private rights, see *Ryan's Furniture Exchange, Inc. v. Mcnair*, 162 So. 483 (Fla. S.Ct. 1935). Under the due process clause of the Constitution of the United States and the State of Florida, each and every person is guaranteed a fair and impartial trial, see *Castellano v. Travelers Insurance Co.*, 305 So.2d 268 (Fla. 2nd DCA 1974).

Equality before the law and uniformity as to person, place, practice, and procedures are essential to proper administration of justice, see *North v. State*, 65 So.2d 77, 78 (Fla. S.Ct. 1952). In addition, the court cannot grant the mother a relief of her admissions, specifically when the mother failed to object to the admissions by pleadings or argument at trial. A trial court denied due process by granting relief that was not requested, noticed, nor litigated by any party, *Federal National Mortgage Assoc. v. Blocker*, 728 So.2d 306 (Fla. 1st DCA 1999). Order denies due process if it adjudicates issues that was not presented by parties or pleadings, *Kerrigan, Estess, Rankin & McLeod v. State*, 711 So.2d 1247 (Fla. 4th DCA 1998). A trial court cannot arbitrarily reject un-rebutted testimony, see *D.M.I. v. State*, 773 So.2d 1216 (Fla. 3rd DCA 2000).

A request for admission is done in order to reduce the cost of proof and issues at trial. When the trial court restricted the father's witnesses for trial, it consequently forced the father to prepare for trial without having to prove

issues that have been conclusively admitted by the mother. The trial court's refusal to make a finding of alienation of affection, which was conclusively admitted and un-refuted by the mother at trial, was unreasonable, oppressive, discriminatory, prejudicial and extremely harmful to the father. Judicial discretion is abused when judicial action is arbitrary, fanciful, or unreasonable, or where no reasonable man would take view adopted by the trial court *Canakaris v. Canakaris* 382 So.2d 1197 (Fla. S.Ct. 1980), *Delno v. Market St. Ry. Co.* 124 F.2d 965 (1942).

There are some freedoms that are so basic to the well being of citizens that the government may not arbitrarily interfere with them without a compelling justification, see *Planned Parenthood of Southeastern Pennsylvania*, 505 U.S. 833, 847-849 (1992). These rights are called "Fundamental Rights." The label of "Fundamental Rights" has been mainly reserved for intimate life decisions about matters central to individual liberty, see *Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261, (1990). The rights recognized as fundamental include but are not limited to the right to marry, have children and direct their education and upbringing, see *Loving v. Virginia*, 388 U.S. 1 (1967); *Skinner v. Oklahoma Ex. Rel. Williams*, 316 U.S. 535 (1942); *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

The 14th Amendment of the U.S. Constitution prohibits the states including trial courts to "to deprive any person of life, liberty or property without due process of law." The phrase without due process of law means "without the process that is due under the law, see *In Re Winship*, 379 U.S. 358 (1979). Rights deemed fundamental to the American System of justice are incorporated into the 14th Amendment as components of the due process clause, which the states are forbidden to deny, see *Duncan v. Louisiana*, 391 U.S. 145, 148-149 (1968). Moreover, Florida's 4th District Court of Appeals constitutional law interpretation

was that the "Parent has a fundamental liberty interest in the care, custody and management of his/her child, see *F.L. v. Department of Children and Families*, 849 So.2d 1114 (Fla. 4th DCA 2003). Fundamental requirements of due process, is opportunity to be heard at meaningful time and in a meaningful manner. Due process is not technical conception with fixed content unrelated to time, place and circumstances; rather, it is flexible and calls for such procedural protections as a particular situation demands, see 14th Amendment of the United States Constitution, *Mathews v. Eldridge*, 96 S.Ct. 893 (1973).

A "Fundamental error" is one that undermines the confidence in the trial outcome and goes to the very foundation of a case, and often, it is the equivalent of a denial of due process, see *Matthews v. State*, 837 So.2d 1167 (Fla. 4th DCA 2003). Error is reversible only when, considering all the facts peculiar to the case under scrutiny, it is reasonably probable that a result more favorable to the father would have been reached if the error had not been committed, *Damico v. Lundberg*, 379 So.2d 964 (Fla. 2nd DCA 1979). The trial court's failure to enter a finding of alienation of affection, when it was conclusively admitted as a matter of law, departed from the essential requirements of law and was inconsistent with rule 1.370 of the Florida rules of civil procedures and the common law interpretation of the Florida Appellate Courts. The trial court had an opportunity to correct its error, pursuant to Florida Statue 90.104(1)(b), and rule 1.370 of the Florida Rules of Civil Procedure, and failed to do so, departing from the essential requirements of Florida law. The concepts of equal protection and the due process clauses of the 14th Amendment both stem from the American ideal of fairness, and are not mutually exclusive, nor are the concepts always interchangeable, in that equal protection of the laws is a more explicit safeguard of prohibited unfairness than due process of law, but a discrimination may nevertheless be so unjustifiable as to be violative of due

process, see *Bolling v. Sharpe*, 347 U.S. 497-98 (1954). The equality that the 14th Amendment guaranteed is the equality of right and not of enjoyment, and a law that confers equal rights on all citizens of the state, or subjects them to equal burden, is an equal law, see *Hadden v. Aitken*, 55 N.W.2d 620 (1952). Equal protection of the laws is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government, *Duncan v. Missouri*, 152 U.S. 382 (1894). State has necessarily broad latitude in economic and social regulation, but when state statutory classifications approach a sensitive and fundamental personal right, the Supreme Court exercises stricter scrutiny, see *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164 (1977).

The action of state courts and of judicial officers in their official capacities is to be regarded as action of the state within the 14th Amendment, see *Shelley v. Kraemer*, 334 U.S. 1 (1948). Application by judiciary of state's common law, even in a lawsuit between private parties, may constitute "state action" which must conform to the constitutional strictures which constrain the government, even where the court is simply enforcing a privately negotiated contract, see *Edwards v. Habib*, 397 F.2d 687 (1968).

CONCLUSION

It is absolutely clear that the trial court's judgment was not supported by substantial competent evidence, since alienation of affection was conclusively admitted at trial as a matter of law. In addition, the trial court committed a fundamental error of law and departed from the essential requirements of the law, when it restricted the father's witnesses for trial, and then later denied the father a finding of alienation of affection, thereby denying the best interest of the child and the father's fundamental and constitutional right to a fair trial. The discriminatory application of Florida law in

this case, was an egregious departure from the essential requirement of the law and was extremely harmful and irreparable to the father, since it allowed the relocation of the parties' minor child to the state of Texas. The following combination of judicial actions; (1) restricting the father's witnesses for trial, (2) denying the un-refuted admission of alienation of affection by the mother at trial, and (3) denying the father's motion for a new trial was an unequal application of Florida law and infringed on the father's federal rights, which are guaranteed by 14th Amendment of the U.S. Constitution and the Parental Kidnapping Prevention Act of 1980 (PKPA) 28 U.S.C. § 1738A. A review of this case is of paramount importance to all persons similarly situated in the United States, since it deals with the relocation of a child, born out of wedlock, to another state at the time that a custody dispute was pending for initial determination of custody and visitation, specifically when the only protection for the non-custodial parent prior to final judgment is the PKPA 28 U.S.C.A. § 1738A. Like most states, Florida law permits custodial parent to relocate absence a restriction clause in the final judgment, see *Giachetti v. Giachetti*, 416 So.2d 27, 28 (Fla. 5th DCA 1982). As a direct result, the U.S. Supreme Court should grant the father this petition for a writ of certiorari to review and justly settle this issue of great importance which affects the parental right of every citizen of the United States.

Respectfully Submitted,
EFRAIN ARRIZAGA
Petitioner, Father/*Pro Se*
2205 E. 97th Ave.
Tampa, Florida 33612
(813) 389-3155

APPENDIX

APPENDIX A - Order from the Second District Court of Appeals denying appellant's motion for rehearing and motion for rehearing en banc or motion to certify question to the Supreme Court, dated May 25, 2005

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

May 25, 2005

Efrain Areizaga CASE NO.: 2D04-906
Appellant/Petitioner L.T. No. : 00-4792 D

v.

Jody Spicer,
Appellee/Respondent.

BY ORDER OF THE COURT:
Appellant's motion for rehearing and motion for rehearing en bane or motion to certify question to the Supreme Court are denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.
Served: Efrain Areizaga, Jody Spicer, Pat Frank, Clerk
Bl

/s/ James Birkhold, Clerk
James Birklold, Clerk

APPENDIX B – Opinion of the Second District Court of Appeals of the State of Florida, dated April 15, 200.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

EFRAIN AREIZAGA
Appellant,

Case No. 2D04-906

v.

JODY SPICER
Appellee.

Opinion filed April 15, 2005.

Appeal from the Circuit Court for Hillsborough County; Charles Ed Bergmann, Judge.

Efrain Areizaga, pro se.
No appearance for Appellee.

PER CURIAM. Affirmed.

ALTENBERND, C.J., and KELLY and LaROSE, JJ., Concur.

APPENDIX C - Final Judgment of Paternity by the 13th Judicial Circuit Court for Hillsborough County, Florida, dated December 15, 2003.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
FAMILY LAW DIVISION

EFRAIN AREIZAGA
Petitioner,

Case No.: 00-4792
Division: F

vs.

JODY SPICER
Respondent.

FINAL JUDGMENT OF PATERNITY

THIS CAUSE having come before the court for trial on November 19, 2003 and upon the petitioner's motion for partial summary judgment; the parties having stipulated that the petitioner is the father of the minor child, CAILYN AREIZAGA-SPICER, who was born to the respondent on October 29, 1997, and the parties having stipulated that they should have the shared parental responsibility of their minor child, the petitioner's motion for partial summary judgment should be granted to the extent that he is determined to be the biological and legal father of the named minor child and that the parties should have the child's shared parental responsibility; the remainder of the relief sought by the petitioner's motion for partial summary judgment should be denied for the reason that there existed genuine issues as to the material facts and

the petitioner was therefore not entitled to a judgment as a matter of law; the court having heard the testimony of the parties, the husband's witnesses, and the court having considered the documentary evidence; the court having found:

A. That the court has jurisdiction of the subject matter, the parties and the child, CAILYN AREIZAGA-SPICER (d.o.b. 10/29/97).

B. That the petitioner, EFRAIN AREIZAGA, is the biological and legal father of the child, CAILYN AREIZAGA-SPICER, who was born to the respondent, JODY SPICER, on October 29, 1997.

C. That the parties should have the shared parental responsibility of their minor child, and that it is in the best interests of the child for the parties to have her shared parental responsibility.

PRIMARY RESIDENTIAL CARE:

D. That application of the evidence to the statutory factors set forth in Chapter 61.13, Florida Statutes results in the following findings:

(a) The Parent Who Is More Likely to Allow the Child Frequent and Continuing Contact with the Nonresidential Parent.

(1) The respondent testified that she had encouraged the parties' child to have telephone contact with the petitioner and she testified, at

some length, to a log she had maintained showing almost daily telephone contact for a period of one month in 2003, and the petitioner testified that that month was representative of the telephone access the petitioner has had with the child for the period of time that the respondent and child have resided in Texas.

(2) It is clear that the parties have had disputes relating to contact. The petitioner repeatedly testified and complained that he had been denied visitation. From the testimony, it is clear that some of the problems were generated by the petitioner's own conduct. Specifically, when the petitioner traveled to Texas in October 2003, he was unable to exercise visitation because of his steadfast refusal to tell the respondent where he and the child would be residing while he was in Texas.

(3) There have been at least seven occasions, according to the respondent's unrebutted testimony, when the respondent returned to Florida and the petitioner exercised visitation, including Thanksgiving of 2002 when the petitioner testified he had exercised at least four days of visitation. Although the respondent did not comply with this court's order that the parties travel to Florida and Texas every other month, the petitioner made it difficult to comply with that order. One of the difficulties, according to the respondent's unrebutted testimony, was the petitioner was consistently late in returning the child to the respondent at the airport and that on each and every occasion, the delay in returning the child resulted in the

respondent and child missing their scheduled flight.

(4) The court finds that neither party has been the epitome of cooperation, and therefore both parties are equal with regard to this factor.

(b) The love, affection, and other emotional ties existing between the parents and the child.

(1) The child has been living in Texas with the respondent for several years. The court has heard testimony regarding the child's numerous relationships in Texas.

(2) The petitioner offered the testimony of his sister and the child's maternal uncle, both of whom testified that there was love and affection between the petitioner and the child. Although both parties have love and affection for the child, and the child has love and affection for them, the emotional ties existing between the respondent and the child are the stronger. This factor favors the respondent.

(c) Capacity and disposition of the parents to provide the child with food, clothing, medical care or other remedial care ... and other material needs.

(1) The parties appear to have an approximately equal capacity to provide the child with food, clothing, care and other material needs. The petitioner earns $13.54 per hour for a 40 hour work week and earns an additional $200.00 per week as a child advocate. The respondent earns $2,773.00 per month.

(2) The petitioner has admitted that he has failed to provide support since at least September of

2002, with the exception of the respondent's testimony that she received one check in February 2003. The petitioner testified that he had not paid support because he had to spend the money on appeals and the expenses of this litigation, thereby indicating to the court that the petitioner felt that the litigation of the case was more important than providing for the child.

(3) The disposition of the respondent to provide food, clothing, care and other material needs is greater than that of the petitioner, and therefore this factor favors the respondent.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(1) The child is now 6 years old; the respondent and the child moved to Texas when the child was approximately 1 and 1/2 years old. The respondent and the child have lived in the same home for approximately 4 and 1/2 years. From the testimony, it appears to be a satisfactory environment, comprised of a 3 bedroom 2 bath mobile home on a !/2 acre. This indicates to the court that the child has a stable residence in Texas.

(2) The testimony from the petitioner and the petitioner's sister was that the petitioner resided in a converted garage in his sister's home that has been outfitted with bathroom, but also contains the home's washer and dryer. The court does not believe that the petitioner's residence would be a satisfactory environment for the child.

(3) It is highly desirable to maintain the continuity and stability that the child has with the respondent in Texas, and this factor, therefore, favors the respondent.

(e) The permanence, as a family unit, of the existing or proposed custodial home.

(1) The family unit as been ongoing in Texas for approximately 4 and !/2 years and the existing and proposed home for the child is far more satisfactory and superior than anything that the petitioner or his witnesses indicated would be available to him.

(2) For much of the same reasons that factor (d) favors the respondent, this factor too favors the respondent.

(f) The moral fitness of the parents

(1) On one hand, the petitioner has had a domestic violence injunction entered against him and the petitioner did not even bother to respond to, or appear in court in response to the domestic violence issues. On the other hand, the petitioner proffered some testimony that some sort of immoral assignation took place in the respondent's apartment before she moved to Texas.

(2) Noting that the petitioner's proffer is not evidence, and that the respondent had no opportunity to reply to the proffer, even if the court were to have found that the petitioner is more morally fit, the number of factors that favor the respondent outweigh any impact a

finding of moral unfitness could make in this case.

(3) Should either party believe that the facts alleged by the petitioner's proffer would be determinative in this case, then either party may raise that issue.

(g) The mental and physical health of the parents.

(1) The petitioner is 40 years of age. The respondent is 29. Although the petitioner has asthma, both parties appear to be in good mental and physical health.

(2) This factor does not favor either party.

(h) The home, school and community record of the child.

(1) There was no evidence concerning this factor other than that child was doing well in kindergarten.

(2) The court did not give great weight to this factor.

(i) The reasonable preference of the child

(1) There was no evidence on this factor. In any event, the child is only 6 years of age, and therefore not of sufficient intelligence, understanding and experience to express a preference.

(j) The willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship.

(1) Both parents have made the parent/child relationship more difficult than it needed to have been.

(2) Both parents have fostered, at times, a parent/child relationship. The respondent has done so by returning to Florida at least 7 times and providing full visitations during those occasions. The petitioner has done so by fostering a relationship with the respondent's family by visiting the respondent's uncle and uncle's family with the parties' child.

(3) Although the court had no testimony from the petitioner as to what he would do to foster a relationship between the child and the respondent, the court finds this factor to apply approximately equally to both parties.

(k) Evidence that either party has knowingly provided false information regarding a domestic violence proceeding.

(1) There was no evidence that either party had provided false information regarding a domestic violence proceeding.

(l) Evidence of domestic violence or child abuse.

(1) There was no credible evidence before the court that either party had committed child abuse.

(2) There was evidence that the petitioner had committed acts of domestic violence against the respondent. The respondent did obtain a domestic violence injunction against the petitioner, and the petitioner chose not to appear

to defend himself at the domestic violence hearing choosing instead to remain at work. The temporary domestic violence injunction was then made permanent.

(3) This factor favors the respondent.

(m) Any other fact considered by the court to be relevant.

(1) The court has taken into consideration the petitioner's claim that the respondent has alienated the child from him. However, both of the petitioner's witnesses testified totally to the contrary. The petitioner's sister testified that there was a close and loving relationship between the petitioner and the child. The respondent's uncle testified similarly. In response to the court's inquiry of the uncle, the uncle testified that he had not notice any type of estrangement between the petitioner and the child and there was nothing to indicate a poor relationship between the petitioner and the child. The petitioner's sister specifically testified that it was not difficult for the petitioner and the child to interact. She testified that she had observed the interaction both before and after the respondent relocated to Texas and the child was happy and the child and the petitioner appeared to have a loving relationship. The uncle testified that the petitioner is a very gracious father and the child accepted him as a father. The uncle testified that he had seen the child since the child and respondent moved to Texas, and that that had occurred over Thanksgiving 2002, and on three or four prior

occasions. The uncle affirmed that the petitioner and child had a loving relationship.

(2) The court does not know on what the petitioner claims that there has been an alienation of affection and specifically finds that there is not evidence to substantiate such a claim.

(3) The petitioner's claim that the child hates him does give the court pause, and it is a factor that the court considered in determining that primary residential care should be with the respondent.

RELOCATION:

E. The court is not entirely convinced that the issue of relocation is matter that must be ruled on. The court is aware of the case of *Leeds v. Adamse*, 832 So.2d 125 (Fla. 4th DCA 2002), in which the 4th District held that absent a residency restriction clause in a final judgment, custodial parents are generally free to relocate with their children. In the instant case, the parties were not married and the respondent, as the mother of a child born out of wedlock, is the "... natural guardian of the child and is entitled to primary residential care and custody of the child unless a court of competent jurisdiction enters an order stating otherwise." §744.301. Fla. Stat. The petitioner acknowledges that there was no order in place that would have prohibited the respondent from relocating with the child. However, in an abundance of caution, and so that the record will not be deficient, the court has considered the statutory factors.

A. Whether move will materially affect the current schedule of contact.

(1) At the time of relocation, there had been no determination of primary or secondary residential care and access. The respondent testified that the petitioner had been present for the child's birth and that he visited "somewhat regularly". The respondent also testified that the petitioner wouldn't babysit when she worked on weekends, and failed to appear to care for the child even when he had committed to doing so. The respondent testified that the petitioner's excuse for not caring for the child on weekends was that he was involved in assisting other children who belonged to his church.

(2) This court has a serious concern as to the extent to which the petitioner availed himself of visitation prior to the respondent's relocation. Consequently, the court has a serious question as to whether or not relocation affected the petitioner's schedule of access with the parties' child.

B. Whether the move would be likely to improve the general quality of life for both the residential parent and the child.

(1) The respondent testified that she had occupied an apartment in Tampa and that the petitioner had had to cosign the lease. At the time of relocation, the respondent's employment had been terminated and the lease was about to expire. Relocating to Texas afforded the respondent the opportunity to obtain gainful employment that offered her the additional substantial benefit of free rent for one year, as well as the use of a vehicle. The relocation,

which is already a. fait accompli, would have, and did, improve the general quality of life for the respondent and the parties' child, by providing them with a three bedroom home in a residential area, and providing the respondent with steady employment and significant benefits.

C. The extent to which visitation rights have been allowed and exercised

(1) Prior to relocation, it appears that the respondent sought to allow the petitioner to exercise visitation with their child, especially on weekends when the respondent worked. According to the respondent's unrefuted testimony, the petitioner chose not exercise visitation on those weekends, nor did the petitioner contradict the respondent's testimony that he had had "somewhat regular" visitation. There was a deficiency of evidence on this issue, however, based upon the testimony, the petitioner was not a father who had exercised his visitation rights when they were available.

D. Whether the primary residential parent, once out of the jurisdiction, will be likely to comply with substitute visitation arrangements.

(1) The court has concerns that the respondent may not be the most compliant with substitute visitation arrangements because she did not comply with them in the past. However, part of the reason for the respondent's failure to comply were the difficulties created by the petitioner

and the intransigent position taken by both parties.

E. Whether the substitute visitation will be adequate to foster a continuing meaningful relationship between the child and the secondary residential parent.

(1) The visitation provisions set forth herein below are adequate to foster a continuing meaningful relationship between the petitioner and the child.

F. Whether the cost of transportation is financially affordable by one or both parties.

(1) The court will order that the parties share equally in the costs of transporting the parties' minor child, and consequently, the costs of transportation will be financially affordable.

G. Whether the move is in the best interests of the child.

(1) The respondent has resided in Texas for 4 and 1/2 years. No testimony was offered as to the respondent's prospects if she were required to return to Florida.

(2) Not only is the petitioner's present residence not the most desirable, the petitioner's sister, in whose renovated garage he lives, has testified that though she has not forced him to leave, it was time for the petitioner to be on his own and that she and her husband required privacy. The petitioner's present residence does not afford him, or the parties' child, stability.

(3) The court makes note of the Catch 22 situation described in the *Leeds* case, and finds itself in the unenviable position of determining what is in the best interests of the child and facing the possibility of requiring a parent to relocate after obtaining employment, home and stability.
(4) Not only is relocation in the child's best interests, the court has no viable option other than to approve relocation.

CHILD SUPPORT:

F. Although the court received evidence of the parties' gross incomes, the court did not have available current financial affidavits. Consequently, jurisdiction over all child support issues should be reserved.

ATTORNEY'S FEES AND COSTS:

G. Pursuant to stipulation, jurisdiction to adjudicate the issues of attorney's fees and costs shall be reserved.

The court having been otherwise fully advised in the premises, it is therefore,

ORDERED AND ADJUDGED:

1. The petitioner, EFRAIN AREIZAGA, shall be, and he is hereby, adjudicated to be the biological and legal father of the minor child, CAILYN AREIZAGA-SPICER, who was born to the respondent, JODY SPICER, on October 29, 1997.

2. The parties shall have the shared parental responsibility of their minor child.

3. The primary residential care of the minor child shall be with the respondent.

4. The secondary residential care of the minor child shall be with the petitioner. As secondary residential parent, the petitioner shall be entitled to the following rights of access:

A. The Thanksgiving holiday in even numbered years; provided, however, that the child shall reside with the respondent during the Thanksgiving holiday in odd numbered years.

B. The first week of the Christmas in odd numbered years and the second week of Christmas in even numbered years; provided, however, that the child shall reside with the wife during the first week of Christmas in even numbered years and during the second week of Christmas in odd numbered years.

(1) The "first week" of Christmas shall mean the seven day period commencing on the first day following the last day of the school year prior to the Christmas break.

(2) The "second week" of Christmas shall mean the seven day period commencing on the 8th day following the last day of the school year prior to the Christmas break. Provided, further, that under no circumstances shall the child be returned to the respondent's home any later than the day prior to the resumption of the school year.

(3) Provided, further, that for the first week of Christmas of 2003, the respondent may accompany the child during the child's visitation with the petitioner and the petitioner and respondent shall endeavor to have the petitioner and child spend the Christmas holidays with the family of the respondent's uncle, and if possible, the respondent shall also reside at her uncle's during that first week of Christmas of 2003.

C. The child's Spring vacation from school each year.

D. Commencing June 1, or at such later date as the child's summer vacation from school may commence, for a period of four consecutive weeks in odd numbered years, and through July 6 in even numbered years.

E. During the Labor Day weekend in odd numbered years; provided, however, that the child will reside with the respondent during Labor Day weekend in even numbered years.

5. Whenever the child is in the residential care of one party, the other party shall have reasonable rights of telephone access with the child.

6. Both parties shall keep the other informed of their residence addresses, residence telephone numbers, and cell phone numbers (if any) and of any changes to them. Should the petitioner spend the night with the minor child anywhere other than his residence, he shall provide the respondent, prior to exercising his rights of access, with the

address and telephone number where he will be spending the night with the child.

7. The parties shall share equally in the costs of air travel for the parties' minor child, and they shall do so in the following manner:

A. Commencing with Christmas of 2003, and every other period of secondary residential access thereafter, the respondent shall acquire the airline tickets for the minor child's round trip air transportation and she shall immediately forward to the petitioner proof of the cost of such transportation. Within ten days of receiving such proof, the petitioner shall reimburse the respondent with one-half of the costs of such transportation.

B. Commencing with Spring break of 2004, and every other period of secondary residential access thereafter, the petitioner shall acquire the airline tickets for the minor child's round trip air transportation and he shall immediately forward to the respondent proof of the cost of such transportation. Within ten days of receiving such proof, the respondent shall reimburse the respondent with one-half of the costs of such transportation.

8. Within ten day of the date of trial, each party shall file, and provide the other with copies of, an updated financial affidavit and copies of their last three payroll stubs or payroll checks. If payroll stubs or checks are not available, then a party may file copies of all W-2's, 1099's and K-1's received for calendar year 2002.

9. An excerpt of the transcript of the trial proceedings in which the court has announced its findings and rulings shall be prepared and filed with the court and the parties shall share equally in the court reporter's fees for the preparation of that transcript.

10. Jurisdiction shall be, and the same is hereby, reserved to adjudicate all child support issues and to adjudicate all claims for awards of attorney's fees and costs.

DONE AND ORDERED in Chambers at Tampa, Florida this 15 day of December.

ORIGINAL SIGNED DEC 15, 2003
/s/ CHARLES ED BERGMANN
CIRCUIT COURT JUDGE

cc: Jody Spicer
Ronald S. Reed, Esquire
Efrain Areizaga

APPENDIX D – Petition for Declaration of Paternity and other Relief and Motion for Temporary Injunction to prevent Removal of the Child(ren) and for denial of Passport Services, and affidavit in support of Motion for Temporary Injunction to Prevent Removal of Children.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HDLLSBOROUGH COUNTY, FLORIDA. CIVIL ACTION
FAMILY LAW DIVISION

EFRAIN ARETZAGA
Petitioner,

Case No.: 00-4792
Division F

vs.

JODY SPICER,
Respondent.

PETITION FOR DECLARATION OF PATERNITY AND OTHER RELIEF

COMES NOW the petitioner, named in the style above, and files this petition, showing unto the Court as grounds therefor:

1. That the petitioner and the respondent, named in the style above, reside in Hillsborough County, Florida.

2. That the petitioner and the respondent, named in the style above, engaged in sexual intercourse with each other in the State of Florida.

3. That as a result of said intercourse, a child was conceived in the State of Florida, said child being CAILYN F. AREIZAGA-SPICER who was born on October 29, 1997.

4. That neither the petitioner nor the respondent were married when said child was conceived or when said child was born.

5. That the best interests of said child would be furthered by the Court's directing the parties to share the parental responsibility for said child.

6. That the petitioner is entitled to specific visitation rights with respect to said child.

7. That the respondent has stated that she wants to remove said child from the petitioner's life.

8. That to prevent the petitioner's visiting said child, the respondent obtained a Final Judgment of Injunction for Protection Against Domestic Violence (After Notice).

9. That in her petition for said injunction, the respondent grossly misrepresented facts and failed to mention repeated acts of violence directed by the respondent against the petitioner.

10. That the respondent repeatedly has denied the petitioner visitation to which the parties agreed because of the respondent's obsession with an evangelist, MIKE MURDOCK.

11. That the respondent has stated that the respondent intends to change the residence of said child to Dallas, Texas, by marrying said evangelist, MERE MURDOCK.

12. That the Court should enjoin the respondent temporarily and permanently from changing the residence of said child to another state because such change would not be in the best interests of said child.

WHEREFORE, the petitioner prays that the Court:

A. Declare that the petitioner is the father of said child;

B. Direct the parties to share the parental responsibility for said child;

C. Award the petitioner specific temporary and permanent visitation rights with respect to said child;

D. Enjoin the respondent temporarily and permanently from changing the residence of said child to another state;

E. Direct the respondent to place a photograph of the petitioner and said child in the sleeping quarters of said child at the respondent's residence;

F. Permit the petitioner to enroll said child in pre-school and direct the parties to share the expenses of transportation related to the child's attending said pre-school;

G. Award the petitioner such other and farther relief as the Court deems meet and just.

/s/ Efrain Areizaga

/s/ Lance K. Stalnaker
LANCE K. STALNAKER Attorney at Law
1319 Fletcher Avenue West Tampa, Florida 33612
(813)963-6269
Attorney for Petitioner

* * * * * * * *

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HDLLSBOROUGH COUNTY, FLORIDA. CIVIL ACTION
FAMILY LAW DIVISION

EFRAIN ARETZAGA
Petitioner,

Case No.: 00-4792
Division F

vs.

JODY SPICER,
Respondent.

MOTION FOR TEMPORARY INJUNCTION TO PREVENT REMOVAL OF CHILD (REN) AND FOR DENIAL OF PASSPORT SERVICES

COMES NOW the petitioner, named in the style above, and files this motion, showing unto the Court as grounds therefore that:

1. There is/are (a) child(ren) involved in this case.

2. Said child(ren) has/have been (a) resident(s) of Hillsborough County, Florida, since birth.

3. Attached hereto, or filed herewith, is my custodial affidavit required by the Uniform Child Custody Jurisdiction Act.

4. Said child(ren) is/are about to be removed permanently from the jurisdiction of the Court.

5. It is in the best interest of said child(ren) that the child(ren) not be removed from the jurisdiction of the Court.

6. Attached hereto, or filed herewith, is my Affidavit in Support of Motion for Temporary Injunction to Prevent Removal of Child(ren).

7. Notice should not be required because apprising the opposing party of this motion before the Court issues the injunction prayed for would prompt the opposing party to do the very thing said injunction would prohibit, that is, remove said child(ren) from the jurisdiction of the Court.

8. In order to prevent the removal of said child(ren) from the jurisdiction of the Court, it is necessary for the Court to issue an injunction.

WHEREFORE, the movant prays that the Court:

A. Issue a temporary injunction to prevent the removal of said child(ren) from the jurisdiction of the Court;

B. Award the movant such other and further relief as the Court deems meet and just.

/s/ Efrain Arcizaga

/s/ Lance K. Stalnaker
LANCE K. STALNAKER Attorney at Law
1319 Fletcher Avenue West Tampa, Florida 33612
(813) 963-6269
Attorney for Petitioner

* * * * * * * *

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HDLLSBOROUGH COUNTY, FLORIDA. CIVIL ACTION
FAMILY LAW DIVISION

EFRAIN ARETZAGA
Petitioner,

Case No.: 00-4792
Division F

vs.

JODY SPICER,
Respondent.

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION TO PREVENT REMOVAL OF CHILD(REN)

THE PETITIONER, named in the style above, states under oath that:

1. This affidavit is filed in support of my Motion for Temporary Injunction to Prevent Removal of Child(ren) and for Denial of Passport Services.

2. The child(ren) named below is/are involved in this case -

Name(s)	Age(s)	Residing With	Address(s)
CAILYN F. AREIZAGA -SPICER	2 +	Respondent	5748 Harborside Tampa, FL 33615

3. Attached hereto, or filed herewith, is my custodial affidavit required by the Uniform Child Custody Jurisdiction Act.

4. I am fearful that the respondent will remove permanently said child(ren) from this jurisdiction to Texas because the respondent has stated that the respondent intends to move herself and the parties' child to Texas where an evangelist, MEKE MURDOCK, would furnish the respondent with a house.

5. I or said child(ren) will suffer the following irreparable injury, loss or damage if said child(ren) is/are removed permanently from this jurisdiction –

> Said child and I will have no contact with each other, and the relationship we established previously will be extinguished.

6. I am in need of relief from the Court to prevent said feared removal of said child(ren).

/s/ Efrain Areizaga

STATE OF FLORIDA
COUNTY OF HTLLSBOROUGH

BEFORE ME, the undersigned authority, at the time of this notarization personally appeared the affiant, EFRAIN AREIZAGA who first being duly sworn said that the foregoing affidavit in support of motion for temporary injunction is true to the best of the affiant's owledge and belief. To verify the identity of the affiant, I relied on Florida Driver's License.

SWORN TO and subscribed before me by the affiant on this 7th Day of April, A.D. 2000. Witness my hand and seal on said date.

(SEAL)

/s/ Joni Melinda Deitch
Notary Public

/s/ Lance K. Stalnaker
LANCE K. STALNAKER Attorney at Law
1319 Fletcher Avenue West Tampa, Florida 33612
(813)963-6269
Attorney for Petitioner

APPENDIX E – Respondent's Answer to Petition for Declaration of Paternity and other Relief, and Counter-Petition for Paternity and other related Relief.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HDLLSBOROUGH COUNTY, FLORIDA. CIVIL ACTION
FAMILY LAW DIVISION

EFRAIN ARETZAGA
Petitioner,

Case No.: 00-4792
Division F

vs.

JODY SPICER,
Respondent.

RESPONDENT'S ANSWER TO PETITION FOR DECLARATION OF PATERNITY AND OTHER RELIEF

COMES NOW the respondent, JODY SPICER, by and through her undersigned attorney, and files this answer to the petition and says:

1. Admits that the petitioner resides in Hillsborough County, Florida but denies that the respondent resides in Hillsborough County.

2. Admitted.
3. Admitted.
4. Admitted.

5. Admitted.
6. Admitted.
7. Denied.

8. Admits that the respondent obtained a Final Judgment of Injunction for Protection Against Domestic Violence (After Notice), but denies the remaining allegations.

9. Denied.
10. Denied.

11. Admits that the respondent had stated her intention to relocate to Texas prior to her relocation but denies the remaining allegations.

12. Denied.

* * * * * * *

COUNTER-PETITION FOR PATERNITY AND OTHER RELATED RELIEF

COMES NOW the respondent, JODY SPICER (hereinafter "mother"), by and through her undersigned attorney, and files this counter-petition against the petitioner, EFRAIN AREIZAGA (hereinafter "father"), and says:

1. That this is an action for determination of paternity and other related relief.

2. That the father is a resident of Hillsborough County, Florida.

3. That the parties engaged in sexual intercourse within the State of Florida, and as a consequence thereof, the mother became pregnant and delivered the parties' child, CAILYN F. AREIZAGA-SPICER, on ' October 29, 1997.

4. That the father, EFRAIN AREIZAGA, is the biological father of said minor child.

5. That it would be in the best interests of the minor child for the court to order the child's shared parental responsibility and for the child's temporary and permanent primary residential care to be with the mother and the child's temporary and permanent secondary residential care to be with the father.

6. That following the entry of a domestic violence injunction against the father, the mother, together with the minor child, relocated to Texas.

7. It would be in the best interests of the minor child for the mother and child to be permitted to remain resident in Texas. Relocation to Texas improves the general quality of the life of the mother and the parties' child; the mother has historically encouraged visitation between the child and the father, but the father has wilfully failed to exercise all of his opportunities to participate in the child's life; the mother will comply will comply with any orders for visitation that may be entered by the court and a substitute visitation schedule will be adequate to foster a continuing, meaningful relationship between the child and the father; the costs of transportation that will be associated with the exercise of visitation by the father is financially affordable to the parties.

8. The mother and child require, and the father is well able to provide, periodic child support, temporarily and upon entry of judgment, consistent with the statutory child support guidelines.

9. The father is well able to provide, and should be required to provide a policy of medical insurance for the benefit of the parties' minor child, as well as payment of all reasonable and necessary medical, dental and orthodontia expenses that will be incurred on behalf of the minor child. Additionally, the husband is well able to provide, and should be required to provide, a policy of life insurance insuring his own life and designating the parties' minor child as beneficiary thereof.

10. The mother has obligated herself to the payment of a reasonable fee to her attorney herein but the father earns an income, and is possessed of assets, substantially greater than the mother's. The father should be required to pay the mother's reasonable attorney's fees, costs and suit monies, both temporarily and upon entry of judgment.

WHEREFORE mother prays that this court:

A. Enter judgment adjudicating the father to be the biological father of the minor child, CAILYN F. AREIZAGA-SPICER.

B. Order that the parties have the shared parental responsibility of their minor child.

C. Order that the child's temporary and permanent primary residential care be with the mother.

D. Order that the child's temporary and permanent secondary residential care be with the father.

E. Allow the mother and minor child to remain resident outside the State of Florida.

F. Require the father to pay temporary and permanent child support.

G. Require the father to maintain medical insurance for the benefit of the minor child.

H. Require the father to pay all reasonable and necessary medical, dental and orthodontia expenses that will be incurred on behalf of the minor child.

I. Require the father to maintain life insurance as security for the award of child support.

J. Require the father to pay the mother's reasonable attorney's fees, costs and suit monies, both temporarily and upon entry of judgment.

K. Grant the mother such other and further relief as to the court may seem just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent this 28th day of April, 2000, by regular U.S. Mail to the father's attorney, Lance K. Stalnaker, Esquire, at 1319 Fletcher Avenue West, Tampa, Florida 33612.

/s/ Ronald S. Reed
Ronald S. Reed, P.A.
202 South Westland Avenue
Tampa, Florida 33606
813-251-2162
Florida Bar Number: 169272
Attorney for Mother

cc: Jody Spicer

APPENDIX F – Petitioner's Amendment to Petition for Declaration of Paternity and Other Relief, filed on November 4, 2002.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HDLL3BOROUGH COUNTY, FLORIDA. CIVIL ACTION
FAMILY LAW DIVISION

EFRAIN ARETZAGA
Petitioner,

Case No.: 00-4792
Division F

vs.

JODY SPICER,
Respondent.

AMENDMENT TO PETITION FOR DECLARATION OF PATERNITY AND OTHER RELIEF

YOU ARE NOTIFIED hereby that the petitioner/father, EFRAIN AREIZAGA, pursuant to a court order for leave of court, files this amended petition showing unto the court as grounds therefor:

1. That the petitioner/father amends his Petition for Declaration of Paternity and other Relief, pursuant to the court's own motion in a hearing on October 1, 2002.

2. That the petitioner and the respondent, named in the case style above, resided in Hillsborough County, Florida at the time that respondent JODY SPICER was served with summon and other legal document for this paternity suit and other relief.

3. That the petitioner and the respondent, named in the case style above, engaged in consensual sexual intercourse with each other in the state of Florida.

4. That as a result of said consensual sexual intercourse, while respondent lived with petitioner at 2205 E. 97th Ave., Tampa, Florida. A child was conceived in the State of Florida, said child being CAILYN F. AREIZAGA-SPICER who was born on October 29, 1997.

5. That neither the petitioner nor the respondent, were married when said child was conceived or when said child was born.

6. That after the petitioner discovered the secret love affair, between the respondent and cult leader MIKE MURDOCK, the respondent refused to communicate with petitioner and denied petitioner any visitation with said minor child.

7. That the respondent after having a secret love affair with cult leader, MIKE MURDOCK from MIKE MURDOCK EVAGELISTIC ASSOCIATION, stated that she will remove said minor child from petitioner's life.

8. That to prevent the petitioner's visitation with the parties' minor child, the respondent submitted false testimony and secured a final judgment of injunction for protection against domestic violence (after notice).

9. That the respondent in her petition for said injunction, see item "8," grossly misrepresented facts and failed to mention repeated acts of violence directed by the respondent against the petitioner in the presence of the parties' minor child.

10. That the respondent has a proven history of domestic violence. When the respondent was involved in a physical altercation (fight) with her mother JOANNE GOODWIN, on March 10, 1995, resulting in an injury and a subsequent arrest of Ms. GOODWIN.

11. That the respondent lacks good moral character, due her upbringing by her mother JOANNE GOODWIN, who has a long history of arrest for drugs and prostitution. Furthermore, the respondent has engaged multiple sexual partners, without petitioner's knowledge, while attending WITHOUT WALLS INTERNATIONAL CHURCH.

12. That the respondent after properly being served in Hillsborough County Florida, with a summons and other legal documentation in this lawsuit, relocated to Texas without a court order.

13. That respondent's relocation to Texas was a vindictive desire to thwart petitioner's visitation rights and alienate the affections between parties' minor child and petitioner.

14. That cult leader, MIKE MURDOCK from MIKE MURDOCK EVANGELISTIC ASSOCIATION, aided and abetted said relocation to Texas by providing respondent with a job, home and vehicle, when respondent failed to meet the minimum qualifications and moral qualifications for her employment with said religious cult.

15. That the court should enjoin the respondent temporarily and permanently from changing the residence of said minor child from Tampa to another state, because such change would not be in the best interests of said child. In addition, that the court should enjoin the respondent from temporarily and permanently from traveling outside the limits of Hillsborough County Florida, with the parties' child, without the consent of the petitioner.

16. That the respondent has demonstrated her passive aggressive behavior and her tendency to alienate the affections, between the parties' minor child and the petitioner, by failing to attend a mediation hearing for visitation on July 12, 2000.

17. That the respondent has demonstrated her passive-aggressive behavior and her tendency to alienate the affections, between the parties' minor child and the petitioner, by opposing visitation in a hearing for temporary visitation on September 18, 2000.

18. That the respondent has repeatedly testified in open court that she doesn't communicate and/or attempt's to communicate with petitioner.

19. That the respondent has repeatedly refused to allow petitioner to participate in any child rearing decisions during the course of this litigation.

20. That on October 17, 2000, the court entered an order awarding the petitioner/father temporary visitation rights and other relief.

21. That the respondent has repeatedly testified and used as a defense that she lacks, the financial resources to pay her share of travel expenses so that the parties' minor child and the petitioner can establish a relationship through visitation.

22. That the respondent has repeatedly testified and used as a defense that she lacks, the financial resources to pay her share of travel expenses, but she has spent an enormous amount of money on elective cosmetic/plastic surgery which from her appearance has altered her eyes, nose, lips, and breast size.

23. That the respondent committed extrinsic fraud by failing to include hi her computation of child support gifts, housing allowance and car allowance. This was done willfully, maliciously and hi bad faith to cause petitioner financial hardship.

24. That petitioner filed numerous motions for contempt against the respondent, where respondent had repeatedly failed to provide visitation, telephonic communications, video conferencing, and engaged in communications that tend to undermine and destroys petitioner's attempt to establish a relationship between the parties' minor child and petitioner.

25. That the respondent has repeatedly refused to provide petitioner with discovery hi an attempt to conceal respondent's: (1) false testimony in numerous proceedings; (2) effort to deny petitioner's visitation with the parties' minor child; (3) telephonic communications with said child; (4) video conferencing with said minor child; (5) pattern of intrinsic, and extrinsic fraud on the court.

26. That the respondent has repeatedly failed to use petitioner's surname, AREIZAGA, in all documentation referencing the parties' minor child while living in the state of Texas. That in addition, the respondent has admitted and testified to the same in open court.

27. That the respondent has repeatedly failed, in violation of several court orders (during the course of this litigation), to provide telephone communications, video conferencing, and discovery. Furthermore, the petitioner has been repeatedly deprived of visitation due to petitioner's financial hardship and respondent's allegation of lack of finances.

28. And a direct result, see above item "27," the respondent has destroyed any possibility of petitioner establishing a normal relationship with the parties' minor child.

29. That the combination of the respondent's efforts in relocating to Texas without a court order, denial of visitation, refusal to mediate, refusal to communicate with petitioner, denying petitioner's involvement in any child rearing decisions, denial in using petitioner's surname of AREIZAGA, denial of telephonic communication, respondent's implied admission to the parties' minor child that the petitioner is not the real father, denial of discovery, and respondent's pattern of intrinsic and extrinsic fraud on the court has not only alienated the affections of the parties' minor child, But, has caused the parties' minor child to hate the petitioner.

30. That said combination of respondent's effort as stated hi item "29," is an intentional infliction of mental injury upon the parties' minor child.

31. That the respondent has intentionally subjected the parties' minor child, for a prolonged period of time, to a severe form of alienation between the parties' child and the petitioner, as stated hi item "29." Furthermore, that respondent's gross misbehaviors (see items "29"), has not only caused the child to hate petitioner, but has also injured the child mentally. By injuring the child's intellectual or psychological capacity as evidenced by a discernible and substantial impairment hi the child's ability to function within the child's normal range of performance and behavior with due regard to the child's culture.

32. That the respondent encourages the parties' minor child's belief that petitioner/father is not her real father, and this behavior by the respondent is emotional and psychological abuse. That this abuse may have temporary and permanent trauma resulting in the abnormal development of said minor child.

33. That on November 1, 2001, respondent motioned for contempt and provided false testimony by stating that she had purchased three airline travel tickets with a visa credit card and subsequently secured a civil contempt of court against petitioner for his alleged failure to pay travel expenses.

34. That on August 7, 2002, respondent testified that she purchased one of the airline tickets, which petitioner was held in contempt on November 1, 2001, using a corporate American Express credit card belonging to MIKE

MURDOCK EVANGELISTIC ASSOCIATION. That said testimony by the respondent substantiates petitioner's allegation, of respondent's fraud on the court and respondent's passive aggressive behavior in her efforts to cause extreme financial hardship and alienate the affections between the parties' minor child and the petitioner.

35. That the respondent has established with the help of her attorney, RONALD REED and MIKE MURDOCK from MIKE MURDOCK EVANGELISTIC ASSOCIATION, a pattern of extrinsic and intrinsic fraud on the court. By; (1) relocating to Texas; (2) filing a false financial affidavit; (3) failure to compute accurately respondent's portion of child support; (4) false testimony in numerous proceedings; (5) defrauding petitioner of false travel expenses; (6) hampering petitioner's presentation of his case; (7) And repeatedly denying petitioner's constitutional right to discovery.

36. That the respondent has testified on numerous occasions that she can't remember relevant issues during the proceeding, and that said memory lost appears to gets worse with every proceeding. And if this refusal to answer relevant question is not with a malicious intent, then respondent's increasing memory lost will be extremely harmful and detrimental to the development of the parties' minor child.

37. That the respondent and boyfriend cult leader, MIKE MURDOCK from MIKE MURDOCK EVANGELISTIC ASSOCIATION, conspired with the CHRISTIAN RETREAT CHURCH, attorney RICHARD V. LEE and WITHOUT WALLS INTERNATIONAL CHURCH to

deny petitioner his constitutional right to discovery and hide evidence of false testimony, fraud and racketeering.
38. That the respondent has neglected said minor child by failing to provide adequate medical treatment.

39. That the respondent's testimony on November 1, 2001, demonstrates her passive aggressive behavior, by denying petitioner visitation with said minor child in September of 2001 (after September 11, terrorist attacks). But, then travels with her religious business stating "I had the option of leaving, but then I would be away form her for three days. My thoughts were, okay, if we are going to die, we all die together kind of a thing." This is not only a passive aggressive behavior against petitioner, but it also suggests a selfish attitude and an extreme indifference for the safety of the parties' minor child. Where in most cases a normal parent will give their life to save their child, the respondent prefers that the child die with her, instead of desiring that the child have a safe normal life, like any Loving caring parent.

40. That the respondent has adopted religious practices from cult leader MIKE MURDOCK, which encourages the alienation of affections between the parties' minor child and petitioner.

41. That the best interest of the child would be furthered, by the court's awarding the petitioner/father sole parental responsibility for said minor child. And declaring that the residence of the petitioner/father shall be the temporary and permanent primary residence of said child.

42. That in the alternative that the court denies petitioner sole parental responsibility, direct the parties to shared

parental responsibility for said minor child, and declare that the residence of the petitioner/father shall be the temporary and permanent primary residence of said minor child.

43. That the current living situation of the parties' minor child with the respondent and shared parental responsibility would be detrimental to the child's overall best interest since the respondent has fostered into said minor child a campaign of hatred, malice and bad faith.

44. If petitioner is awarded sole parental responsibility or shared parental responsibility with primary residence of said minor child. The petitioner/father is more likely to foster a loving and nurturing relationship with the non-custodial parent. In addition, the petitioner will encourage visitation and communication between the parties' minor child and the non-custodial parent with or without a court order.

45. That the respondent is able to pay the petitioner/father a reasonable amount of temporary and permanent support for said child and that the petitioner needs said child support.

46. That the respondent is able to acquire and to maintain insurance on her life as security for an award of child support.

47. That the respondent is able to pay a portion of the amount of the health-related bills of said minor child, which are not covered by insurance including deductibles.

48. That the respondent is able to pay the cost of prosecuting the action styled above including, but not limited to, all expenses for discovery, court reporter, court

transcripts, witness fees, legal research, cost of discovery, copies, mailing, parking and the cost of preparation of all court related documentation.

WHEREFORE, the petitioner/father prays that the court:

A. Enter a judgment and/or order that the petitioner/father shall have sole parental responsibility for said minor child. And declare that the residence of the petitioner/father shall be the temporary and permanent primary residence of said child.

B. Enter an order finding that shared parental responsibility would be detrimental to the child's overall best interest, due to respondent's willful, malicious, bad faith alienation of affection between the parties' minor child and the petitioner.

C. Enter a judgment and/or order that the parties have shared parental responsibility of the minor child, if the court denies petitioner sole parental responsibility. And declare that the residence of the petitioner/lamer shall be the temporary and permanent primary residence of said minor child.

D. Order the respondent to temporary and permanently relocate the parties' minor child to Tampa Florida.

E. Order the respondent from temporary traveling outside the limits of Hillsborough County Florida, with the parties' minor child, without the consent of the petitioner.

F. Order allowing a name change of the parties' minor child's surname from "AREIZAGA-SPICER" to "AREIZAGA."

G. Order Respondent, JODY SPICER, to instruct the parties' minor child, and all other individuals in contact with the parties' minor child, that the petitioner EFRAJN AREIZAGA is the parties' child's real father.

H. Award the petitioner the visitation rights and related rights prayed for in said petition if the court denies the petitioner's prayer for custody.

I. Order that the minor child's temporary and pernianent secondary residential care be with the respondent.

J. Enter a judgment adjudicating the respondent JODY SPICER, and her attorney, RONALD REED, of committing a pattern of intrinsic and extrinsic fraud on the court.

K. Enter a judgment adjudicating the respondent, JODY SPICER, of willfully, maliciously and in bad faith alienating the affections of the parties' minor child from the petitioner/father.

L. Order the respondent to pay temporary and permanent child support for said minor child.

M. Order the respondent to pay a portion of the amount, of all health and dental related bills of said minor child, which are not covered by insurance including but not limited to deductibles.

N. Order the respondent to maintain life insurance as security for the award of child support.

O. Order the respondent to pay the cost of the cost of prosecuting the action styled above including, but not limited to, all expenses for discovery, court reporter, court transcripts, witness fees, legal research, cost of discovery, copies, mailing, parking and the cost of preparation of all court related documentation.

P. Award the petitioner the relief prayed for in his Petition for Declaration of Paternity and Other Relief which is not inconsistent with the relief prayed for herein.

Q. Grant petitioner any remedy that the Court may deem fair and just.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I personally served a copy of this petitioner's amended petition on the respondent, JODY SPICER. By delivering said copy by mail on this 4th day of November, A. D. 2002, to the respondent's attorney, RONALD S. REED, Esq., Attorney at Law, Ronald S. Reed, P.A., 202 South Westland Avenue, Tampa, Florida 33606."

/s/ Efrain Areizaga
Petitioner/ Pro Se
2205 E. 97th Ave.
Tampa, Florida 33612
(813)389-3155

APPENDIX G – Respondent's Answer to Petitioner's Amendment to Petition for Declaration of Paternity and other Relief.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HDLLSBOROUGH COUNTY, FLORIDA. CIVIL ACTION
FAMILY LAW DIVISION

EFRAIN ARETZAGA
Petitioner,

Case No.: 00-4792
Division F

vs.

JODY SPICER,
Respondent.

RESPONDENT'S ANSWER TO PETITIONER'S AMENDMENT TO PETITION FOR DECLARATION OF PATERNITY AND OTHER RELIEF

COMES NOW the Respondent, JODY SPICER, by and through her undersigned attorney and files her Answer to the Petitioner's Amendment and as to each numbered paragraph says:

1. Admitted.
2. Denied.
3. Admitted.
4. Admitted.
5. Admitted.
6. Without knowledge as to the petitioner discovering a secret love affair; the remainder of this Paragraph is denied.
7. Denied.

8. Denied
9. Denied.
10. Denied.
11. Denied
12. Denied
13. Denied
14. Denied.
15. Denied
16. Denied.
17. Denied
18. Denied.
19. Denied.
20. Admitted
21. Admitted.
22. Admitted that the Respondent has repeatedly testified and used as a defense that she lacks the financial resources to pay her share of travel expenses; the remainder of this Paragraph is denied.
23. Denied.
24. Admitted.
25. Denied.
26. Admitted.
27. Denied.
28. Denied.
29. Denied
30. Denied
31. Denied
32. Denied.
33. Denied
34. Denied
35. Denied
36. Denied
37. Denied
38. Denied

39. Denied
40. Denied
41. Denied
42. Denied
43. Denied
44. Denied
45. Admitted that the Respondent is able to pay the Petitioner a reasonable amount of temporary and permanent child support for said child; the remainder of this Paragraph is denied.
46. Denied.
47. Admitted.
48. Denied.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Efrain Areizaga at 2205 East 97lh Street, Tampa, Florida 33612 this 5 day of November, 2002.

/s/ Ronald S. Reed
RONALD S. REED, P.A.
202 South Westland Avenue
Tampa, Florida 33606
813-251-2162
FBN 169272
Attorney for Respondent

cc: Jody Spicer

APPENDIX H – Petitioner's Request for Admissions without attachments.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HDLLSBOROUGH COUNTY, FLORIDA. CIVIL ACTION
FAMILY LAW DIVISION

EFRAIN ARETZAGA
Petitioner,

Case No.: 00-4792
Division F

vs.

JODY SPICER,
Respondent.

PETITIONER'S REQUEST FOR ADMISSIONS

TO: JODY SPICER, Respondent.
RONALD S. REED, Respondent's Attorney

Petitioner, EFRAIN AREIZAGA, requests that the respondent, JODY SPICER, within 30 days after service of this request, to make the following admissions, under oath and before her GOD almighty. And the respondent should examine and verify all the documentation provided by petitioner, before making said admissions[1]; that each of the following statements are true:

[1] The Petitioner's Supplemental Appendix "A" should be used in conjunction with Petitioner's Request for Admissions. The supplemental appendix will be cited as petitioner's exhibit followed by the enumerated exhibit (P-_).

1. That you stated to your aunt Sissy Davis that you had moved to the' state of Texas on April 22, 2000.

2. That you refused to accept child support in a hearing on April 5, 2000, on a motion filed by EFRAIN AREIZAGA requesting to pay child support and restrict you from moving to the state of Texas (case no. 00-1518, see P-l).

3. That you were aware that petitioner was seeking to establish legal visitation rights with the parties' minor child in the state of Florida, and to prevent you from removing the parties' minor child from the jurisdiction of Florida, prior to your relocation to Texas (see documents in P-l & P-2).

4. That you were present and still living in the state of Florida on April 8, 2000, when you were served with petitioner's summons, temporary injunction to prevent you from moving to Texas and other relief (see documents P-l, P-2, P-l 6, P-3 & P-4).

5. That you had moved to Texas after being notified with petitioner's motion to restrict relocation and the service of petitioner's summons, injunction to prevent removal, and other relief in petitioner's paternity suit (see P-l, P-2, P-3.P-16&P-4).

6. Admit or deny the genuineness of document hi Petitioner's exhibit # P-4 of Petitioner's Supplemental Appendix "A."

7. That on April 8, 2000, while in Tampa Florida at the Post Office located at 7521 Paula Dr., Tampa Florida

33615 (see P-3, zone/route ID number and endorsement), you forwarded your address to P.O. Box 150 in Argyle Texas 76226, (see P-4). And that said P.O. Box 150 hi Argyle Texas 76226, belongs to cult leader and your romantic boyfriend MIKE MURDOCK from MIKE MUKDOCK EVANGELISTIC ASSOCIATION.

8. Admit or deny the genuineness of the document in Petitioner's exhibit # P-5 of Petitioner's Supplemental Appendix "A."

9. That you attended a religious service by MIKE MURDOCK from MIKE MURDOCK EVANGELISTIC ASSOCIATION at WITHOUT WALLS INTERNATIONAL CHURCH on Sunday July 2, 2000. And that a picture was taken of you with petitioner's sister and the parties' minor child, by petitioner's sister's husband LAZARO TALAMANTES. Moreover, that your vehicle a Chevrolet GEO Storm, can be seen in said picture with boxes in the back of the vehicle. In addition, other boxes were present in the back seat (see picture P-5).

10. That a couple of days before the termination of the lease on June 30, 2000 moved your belongings, out of the parties' apartment located at Parker's Landing 5748 Harborside Drive Tampa Florida 33615 (see picture P-5).

11. That you failed to attend a mediation conference for visitation purposes, on July 12, 2000, and thereby hindering petitioner's efforts to visit with the parties' minor child (see P-6).

12. That in a hearing for temporary visitation on September

18, 2000, you refused to provide any visitation between the petitioner and the parties' minor child claiming that petitioner was not legally the father (see lines 18-23 of page 3 in P-7).

13. Admit or deny the genuineness of the document in Petitioner's exhibit # P-9 of Petitioner's Supplemental Appendix "A."

14. That you failed to include housing and car allowance in your financial affidavit filed on September 19, 2000 (see affidavit in P-9, and lines 11-14 of page 18 in P-7).

15. That between January and September of 2000, you made absolutely no effort to establish visitation and communication between the petitioner and the parties' minor child (see lines 6-9 of page 20 & lines 20-25 of page 21 in P-7).

16. That between January and September of 2000, you failed to establish, facilitate, foster and nurture a meaningful and Loving relationship between the petitioner and the parties' minor child (see lines 6-9 of page 20 & lines 20-25 of page 25 in P-7).

17. That pursuant to a court order entered on October 17, 2002, you failed to purchase travel tickets and/or make any arrangements for visitation, between the petitioner and the parties' minor child, during Christmas beginning one-half day of Christmas Day and continue through the weekend commencing December 27, 2002 (see P-8).

18. That you failed to use as a surname "Areizaga-Spicer" when referring to the parties' minor child.

19. Admit or deny the genuineness of the recordings and transcripts of said recordings in Petitioner's exhibit # P-10 of Petitioner's Supplemental Appendix "A."

20. That you failed to correct, instruct and reinforce to the parties' minor child that petitioner is her real father during two telephonic conversation using speaker phone on April and May of 2002 (see P-10).

21. And that this failure to correct, instruct, and reinforce to the parties' minor child that petitioner is her real father, has persisted prior to petitioner's filing of his motion for contempt filed on October 2001 (see P-34) and heard on November 1, 2001.

22. That you repeatedly failed, for whatever reason, to provide petitioner with the following court ordered visitation dates: September 21-24, 2001, November 23-26, 2001, December 2001, February 2002 to July 2002, September to November 28 (less than half a day), and December 2002 to Tampa Florida as pursuant to court orders filed on October 1 7, 2000, May 31, 2001, March 1, 2002 and October 17, 2002.

23. That pursuant to a court order, you failed to provide petitioner repeatedly with daily telephonic communications (see P-8).

24. That pursuant to a court order, you railed to provide petitioner repeatedly with video conferencing (see P-8 & P-1 1).

25. That you have intentionally and willfully led the parties' minor child to believe that petitioner is not her real father (see P-10).

26. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-l 2 of Petitioner's Supplemental Appendix "A."

27. That you purchased American Airlines Ticket coupon number AA7151928798, and AA7151928799 from Dallas to Tampa on Flight number 1156 on January 18, 2001, and from Tampa to Dallas flight number 1703 on January 22, 2001, with visa credit card number 4128003494861647 (see P-12).

28. That between January 18, 2001 and January 22, 2001, you were working and/or were present with your religious business MIKE MURDOCK EVANGELISTIC ASSOCIATION at the CHRISTIAN RETREAT CHURCH located in Bradenton Florida (see P-13).

29. That said visa credit card number 4128003494861647 has been used by MIKE MURDOCK for his religious business. And that MIKE MURDOCK and/or MIKE MURDOCK EVANGELISTIC ASSOCIATION is responsible for said visa credit card (see P-12).

30. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-l 4 of Petitioner's Supplemental Appendix "A."

31. That you purchased a Delta ticket coupon number 006 7182247537 and 006 7182247538, for flight number 2088 Dallas to Tampa on May 11, 2001 and flight number

1235 Tampa to Dallas on May 14, 2001 respectively, with visa credit card number 4366784500071104 (see P-14).

32. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-15 of Petitioner's Supplemental Appendix "A."

33. That between May 11, 2001 to May 14, 2001, you were working and were in charged of the partners breakfast meeting with your religious business MIKE MURDOCK EVANGELISTIC ASSOCIATION at the TAMPA HILTON AIRPORT HOTEL located in Tampa, Florida (see P-15).

34. That all your hotel expenses from May 11, 2001 to May 14, 2001, at the Tampa Hilton Airport Hotel was paid by MIKE MURDOCK EVANGELISTIC ASSOCIATION with American Express credit card number 378209427042115 (see P-15).

35. That you purchased a Delta ticket coupon number 006 7197792846 and 006 7197792847, for flight number 816 Dallas to Tampa on July 13, 2001 and flight number 1867 Tampa to Dallas on July 16, 2001 respectively, with visa credit card number 4366784500071104 (see P-14).

36. That you exchanged (see dates in item "35" above) Delta ticket coupon number 006 7197792846 and 006 7197792847, for flight number 816 Dallas to Tampa and flight number 1867 Tampa to Dallas respectively, for Delta ticket coupon number 006 2152352252 and 006 2152352253 for flight number 930 Dallas to Tampa on November 30, 2001 and flight number 1235 Tampa to Dallas on December 2, 2001 respectively (see P-14).

37. That you were aware when testifying in a hearing for contempt against petitioner on November 1, 2001, that the final airline ticket coupons were purchased with credit cards that did not belong to you and/or credit cards and that you were not responsible for making payments.

38. That you were aware when testifying hi a hearing for contempt against petitioner on November 1, 2001, that you exchanged (see dates in item "35") Delta ticket coupon number 006 7197792846 and 006 7197792847, for flight number 816 Dallas to Tampa and flight number 1867 Tampa to Dallas respectively, for Delta ticket coupon number 006 2152352252 and 006 2152352253 for flight number 930 Dallas to Tampa on November 30, 2001 and flight number 1235 Tampa to Dallas on December 2, 2001 respectively (see P-14).

39. That you led the court to believe that the information provided by you in your motion for contempt (P-17), which indicated that you purchased said airline ticket exchanged above with a visa credit card belonging to you. When in reality you were very much aware that said tickets were exchanged and consequently purchased with an American express belonging to your religious business.

40. That as a direct result of your misconduct and deception using false evidence hi item #38 above, petitioner was gravely injured financially.

41. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-18 of Petitioner's Supplemental Appendix "A."

42. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-19 of Petitioner's Supplemental Appendix "A."

43. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-20 of Petitioner's Supplemental Appendix "A."

44. That you were on religious business between July 13, 2001 to July 16, 2001 at the LIVING WATER CHURCH. And that you were aware that cult leader MIKE MURDOCK from MIKE MURDOCK EVANGELISTIC ASSOCIATION was stay at the EMBASSY SUITES HOTEL located at 3705 Spectrum Blvd., in Tampa Florida (see P-18, P-19 & P-20).

45. That said hotel suite at the EMBASSY SUITES HOTEL was paid by the LIVING WATER CHURCH, and that you made a call from your cell phone, while in Tampa, to said hotel suite during this period of time (see P-18, P-20 & call number 50 on July 15 in P-19).

46. That said visa credit card number 4366784500071104 has been used by MIKE MURDOCK for his religious business. And that MIKE MURDOCK and/or MIKE MURDOCK EVANGELISTIC ASSOCIATION is responsible for said visa credit card (see P-12).

47. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-21 of Petitioner's Supplemental Appendix "A."

48. That you were on religious business between November 30, 2001 and December 2, 2001 (see P-21).

49. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-35 of Petitioner's Supplemental Appendix "A."

50. That you purchased the final Delta ticket coupons number 006 2151925464 and 006 2151925465, for flight number 930 Dallas to Tampa on July 13, 2001 and flight number 1235 Tampa to Dallas on July 16, 2001 respectively, with American express credit card number 378209427041133 (see P-14).

51. That said American express credit card number 378209427041133 has been used by MIKE MURDOCK for his religious business. And that MIKE MURDOCK and/or MIKE MURDOCK EVANGELISTIC ASSOCIATION is responsible for said American express credit card (see P-15).

52. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-22 of Petitioner's Supplemental Appendix "A."

53. That you purchased a Continental Airlines ticket coupon number 0057058276101 for flight number 1506 from Houston to Tampa on October 31, 2001 and flight number 1807 from Tampa to Houston on November 1, 2001 with visa credit card number 4366784500071104 (see P-22).

54. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-23 of Petitioner's Supplemental Appendix "A."

55. That all your hotel expenses from October 31, 2001 to November 1, 2001, at the DoubleTree Hotel was paid by MIKE MURDOCK EVANGELISTIC ASSOCIATION with visa credit card number 4559540501140017 (see P-23).

56. Admit or deny the genuineness of the picture documents in Petitioner's exhibit # P-24 of Petitioner's Supplemental Appendix "A."

57. That you spend money to build a perimeter fence in the property located at 308 Willow in Argyle Texas, (see P-24).

58. Admit or deny the genuineness of the document in Petitioner's exhibit # P-25 of Petitioner's Supplemental Appendix "A."

59. That you spend and/or received $30,000.00 for the purchase of the property located at 308 Willow, Argyle Texas (see P-25).

60. That although you purchase said property located at 308 Willow in Argyle Texas, Denton County Clerks office records indicate that as of the date of this document, said property is still owned by MIKE MURDOCK EVANGELISTIC ASSOCIATION.

61. That you spend and/or received funds for numerous plastic surgeries for the following body parts including, but not limited to your nose, eyes, lips and breasts.

62. Admit or deny the genuineness of the document in Petitioner's exhibit # P-26 of Petitioner's Supplemental Appendix "A."

63. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-27 of Petitioner's Supplemental Appendix "A."

64. That you have in your possession mutual funds and a CD account (see P-26 & P-27).

65. That you have received and/or are receiving housing and/or car allowances (see page in P-7).

66. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-28 of Petitioner's Supplemental Appendix "A."

67. Admit or deny the genuineness oi the document in Petitioner's exhibit # P-29 of Petitioner's Supplemental Appendix "A.3"

68. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-30 of Petitioner's Supplemental Appendix "A."

69. Since, you only made $7,954.39 in 1999 and $907.50 in the year 2000 from Barbizon School of Modeling. MIKE MURDOCK and/or MIKE MURDOCK EVANGELISTIC ASSOCIATION provided the funds for your relocation to Texas and of your attorney's fees to RONALD REED for $3,250.00 on May 3, 2000 (see P-28, P-29 & P-30).

70. That although you had numerous sources of funds you failed to provide and/or allocate any funds for travel and visitation between the petitioner and the parties' minor child.

71. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-31 of Petitioner's Supplemental Appendix "A."

72. That according to a witness interviewed by police (MARK KAPREZIAN), on March 10, 1995, you and your mother JOANN M. GOODWIN engaged in an act of domestic violence by fighting and consequently your mother JOANN was arrested (see P-31).

73. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-32 of Petitioner's Supplemental Appendix "A."

74. That you lack the necessary qualification and experience at the time of application and hiring for employment regarding your current job position (see and compare P-28 & P-32).

75. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-33 of Petitioner's Supplemental Appendix "A."

76. That it is the religious practice that you employ, a practice taught and preached by MIKE MURDOCK from MIKE MURDOCK EVANGELISTIC ASSOCIATION, to –alienate all those non-believers from your life and that of the parties' child from petitioner.

77. That MIKE MURDOCK from MIKE MURDOCK EVANGELISTIC ASSOCIATION, was aware that petitioner was seeking formal visitation with the parties' child in Florida's Courts at the time that MIKE MURDOCK provided you with the financial resources to

move to Texas, pay for legal fees, provide you with a job which you did not qualify for and which you lacked the moral character.

78. MIKE MURDOCK from MIKE MURDOCK EVAGELISTIC ASSOCIATION was your religious intercessor, counseled you that petitioner should have limited interaction with the parties' minor child due to your religious practices and beliefs.

79. That you have intentionally with malice and in bad faith alienated the affections of between the petitioner and the parties' minor child.

80. That MIKE MURDOCK from MIKE MURDOCK EVANGELISTIC ASSOCIATION was aware, and gave you consent, for you to use their business credit cards during religious business travel, to provide visitation between the petitioner and the parties' child between January 18-22, 2001, May 11-14, 2001, and July 13-16, 2001. And furthermore that MIKE MURDOCK was aware that you tried to seek illegally the reimbursement of said business religious expense using a legal court order.

81. That you waived parishioner-clergy privilege with pastor HECTOR GOMEZ.

82. That you waived parishioner-clergy privilege with religious cult leaders RANDY WHITE from WITHOUT WALLS INTERNATIONAL CHURCH.

83. That you waived parishioner-clergy privilege with religious cult leaders MIKE MURDOCK from MIKE MURDOCK EVANGELISTIC ASSOCIATION.

84. That you've revealed to friends and others at WITHOUT WALLS INTERNATIONAL CHURCH that you and your family have a demonic spirit of sexual promiscuity.

85. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-36 of Petitioner's Supplemental Appendix "A."

86. That you filed a missing person report, on the parties' minor child while petitioner was visiting said minor child in Texas, on June 16, 2001 (Argyle Police Department missing/incident report # 210942, P-36).

87. Admit or deny the genuineness of the documents in Petitioner's exhibit # P-37 of Petitioner's Supplemental Appendix "A."

88. That you have worked at least 80 hours in one week with your religious business/work at MIKE MURDOCK EVANGELISTIC ASSOCIATION (see P-37).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a copy of this request for admissions on the respondent, JODY SPICER. By personally delivering said copy via mail on this 21st day of February, A. D. 2003, to the respondent's attorney, RONALD S. REED, Esq.. Attorney at Law, Ronald S. Reed, P.A., 202 South Westland Avenue, Tampa, Florida 33606.

/s/ Efrain Areizaga
Petitioner/ Pro Se

APPENDIX I – Affidavit of Expert witness MITCHELL I. KROUNGOLD, Ph.D., exhibit P-22 in Petitioner's motion for Summary Judgment at Trial.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HDLLSBOROUGH COUNTY, FLORIDA. CIVIL ACTION
FAMILY LAW DIVISION

EFRAIN ARETZAGA
Petitioner,

Case No.: 00-4792
Division F

vs.

JODY SPICER,
Respondent.

AFFIDAVIT OF EXPE''T WITNESS

PURSUANT to petitioner's request for my expert opinion in petitioner's child custody case EFRAIN AREIZAGA v. JODY SPICER, I, MITCHELL KROUNGOLD, Ph.D., who having first duly sworn, deposes and says:

1. I, MITCHELL KROUNGOLD, Ph.D., am a Psychologist licensed to practice in the state of Florida. I maintain an office for the purpose of practicing Child and Adult Psychology, at 401 Corbett Street, Suite 300, Clearwater, Florida, County of Pinellas, State of Florida.

2. I incorporate by reference and attach hereto, my Curriculum Vitae detailing my expertise in the field of child and adult psychology.

3. I incorporate by reference and attach hereto, my expert opinion in the case of EFRAIN AREIZAGA v. JODY SPICER.

4. I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of Florida.

5. Further Affiant Sayeth Not.

/s/ Mitchell Kroungold
MITCHELL KROUNGOLD, Ph.D.
Licensed Psychologist, Expert Witness
License # PY0002366

STATE OF FLORIDA
PINELLAS COUNTY, FLORIDA

BEFORE ME, the undersigned authority, at the time of this notarization personally appeared the affiant, MITCHELL KROUNGOLD, Ph.D., who first being duly sworn said that the foregoing affidavit in support of a motion for summary judgment is true to the best of the affiant's knowledge and belief. To verify the identity of the affiant, I relied on the following form of identification Florida Driver's License

SWORN TO and subscribed before me by the affiant on this 28th day of May, 2003. Witness my hand and seal on said date.

/s/ Dana Gilmore
Signature of Notary Public
My commission expires on: 6/6/2006
Notary Public Comm. #: DD0096730
(SEAL)

CURRICULUM VITAE

Name: Mitchell Kroungold

License: Licensed as Psychologist
PY 0002366 (effective 3/29/82

Address: PSYCHOLOGICAL SERVICES
401 Corbett St. #300
Clearwater, Florida 33756
(727) 442-6007

Birthdate: November 4, 1951

Marital Status: Married, wife has a Master's Degree in Social Work

Education:

1) Syracuse University September, 1974 - December, 1979 Doctoral Program in School Psychology Cumulative Index: 3.73 (72 credits) Ph.D. in School Psychology awarded December, 1979 Master's Degree and School Psychology Certification by the State of New York (60 credits) awarded February, 1977.

2) Pennsylvania State University Freshman, Junior and Senior Years Degree: Bachelor of Arts, 1973 Major Field: Psychology Cumulative Index: 3.69

3) Temple University Sophomore Year Cumulative Index: 3.03

Sample of Continuing Education:

1) Attention Deficit Hyperactivity Disorder: The Latest Assessment and Treatment Strategies; C. Keith Conners, Ph.D. and Juliet L Jett, Ph.D.; April 2001

2) Treatment of Familial Violence; Dr. Don Meichenbaum; February 2001

3) Working with Substance Abuse Clients; Dr. Albert Ellis; Febuary2001

4) Treating Patients with Alcohol and Other Drug Problems: An Integrated Approach; Dr. Robert Margolis; May 2000

5) The Use of Third Party Information in Forensic Assessment; Dr. Kirk Heilbrun and Dr. Janet Warren; May 1999

6) Recovered Memories of Abuse; Dr. Kenneth Pope and Dr. Laura Brown; May 1999

7) Bricklin Family of Child Custody Instruments; Dr. Barry Bricklin; May 1998

8) Risk Management with Potentially Dangerous Patients; Dr. Bruce Bennett; April 1998

9) Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony; Dr. Stephen Ceci and Dr. Maggie Bruck; March 1998

10) Evaluation and Treatment of Child Sexual Abuse; Dr. Kathryn Kuehnle; November 1997

11) Evaluation of True & False Child Sex Abuse; Dr. Richard Garner; June 1997

12) Ethical & Legal Principles for Mental Health Practice; Dr, Robert Woody; May 1997

13) Civil Forensic Applications of the MMPI-2; Dr. Roger Green and Dr. Stuart Greenberg; May 1997

14) Abused Women and Survivor Therapy; Dr. Lenore Walker; June 1996.

15) How to Conduct a Comprehensive Custody Evaluation; Dr. Barry Bricklin; May 1996.

16) The MMPI, MMPI-2, and MMPI-A in Court: A Practical Guide for Expert Witnesses in Court; Pope, Butcher, and Seelen; 1995.

17) Treating Sexual Trauma; Dr. William Tollefson; 1994.

18) Developments in Child Custody Consultation and Testimony; Dr. Ted Blau; 1985.

19) Coping with Psychiatric and Psychological Testimony; Dr. JayZiskin; 1985.

20) Family Evaluation in Child Custody Litigation; Dr. Richard Gardner; 1982.

Professional Associations:

American Psychological Association Florida Psychological Association

Honors:

1) Syracuse University Fellowship - Summer, 1976.

2) Graduated Pennsylvania State University with High Distinction

3) Phi Beta Kappa

4) Psi Chi

Hospital Affiliation:

Fairwinds Treatment Center

Current Work Experience:

Psychologist in private practice
Clearwater, Florida
January 1981 - present
Duties: Individual and family psychotherapy and psychological assessment.

Special Expertise and Experience:
Registered Custody Evaluator - Academy Diplomate.

Expert witness and consultant to Guardian ad Litem Program for sexual abuse evaluations.

Consultant on custody issues for Guardian ad Litem Program.

Training provided to professional staff on topics including divorce adjustment, family therapy, and psychological testing.

Training provided to Court Investigators on psychological testing in Custody Evaluations.

Conducted over 1,000 work-related evaluations for the Office of Vocational Rehabilitation, corporations, and private individuals.

Conducted over 2,000 psycho-educational evaluations.

Consultant to Pinellas County Schools.

Expert Testimony provided to Florida Legislative Committee on Responsible Fatherhood - February 1997.

Member of School Advisory Council in Pinellas County Schools since 1991. Chairperson of School Advisory Council at Seminole Middle School 1997-1999. Chairperson of School Advisory Council at Seminole High School 1999-present.

Previous Work Experience:

1) Psychology Instructor at Shorecrest High School
January 1983 - January 1984
Duties: Taught Introduction Psychology course to high school seniors; supervised research projects.

2) Psychologist with Pinellas County Schools, Pinellas County, Florida
August 1980 - August 1982 Supervisor: Ralph Bailey, Ph.D.
Duties: Services were provided in 3 high schools through the Positive Alternatives to Student Suspension (PASS) Program. Duties included individual, family and group counseling, psychological assessment, staff development, parent education classes. Directed project which wrote and implemented a curriculum that teaches social skills and stress management strategies to emotionally handicapped children.

3) Psychologist with Chesterfield County Schools Chesterfield, Virginia
August 1977-July 1980
August 1977 - July 1978 - Predoctoral Internship
Supervisor: Lynne Fleming, Ph.D.
Duties: Services were provided in elementary, middle, and high schools that included a wide range of special education populations. Duties included consultation with parents and teachers; assessment, individual and group counseling, coordination of special education committees, and coordination of in-service programs for psychologists.

4) Instructor for Effective Parenting Skills, course offered through Adult Education Program, Chesterfield County, Virginia October 1977-May 1980.

5) Facilitator for Court Alternative Program, Henrico County, Virginia
August 1978-July 1980
Duties: Co-led multi-family groups with families of adolescent offenders.

6) Psychologist with the Upward Bound Program, Syracuse, New York
June 1977 - August 1977
Duties: Services involved individual and group counseling with disadvantaged high school students.

* * * * * * * * *

MITCHELL KROUNGOLD, Ph.D.
CHILD AND ADULT PSYCHOLOGY
License # PY0002366
401 Corbett Street, Suite 300
Clearwater, FL 33756
Tel: (727) 442-6007 • Fax: (727) 441-3981

May 22, 2003

Mr. Efrain Areizaga
2205 E. 97th Ave.
Tampa, FL 33612

Dear Mr. Areizaga:

To date, I have provided the following services regarding your case: I had a 1 1/2 hour interview with you; I reviewed your initial Brief of Appellant regarding your appeal; I reviewed numerous court documents as well as a summary of your concerns. I also listened to recordings of telephone discussions with your daughter.

I am extremely concerned that you have had minimal contact with your daughter since February 2000. I reviewed an Official Mail Forwarding Change of Address form dated April 10, 2000 whereby Ms. Jodie Spicer changed her address from Tampa to Texas. This supports your position that Ms. Spicer was still in town when she was served with your Motion for Temporary Injunction to Prevent Removal of the Child on April 8, 2000. I reviewed the deposition of Mr. Richard Abele who is a Certified Process Server. He testified that he served Ms. Spicer's roommate with legal papers on April 8, 2000. His testimony states that based on his conversation with Ms. Spicer's roommate, he concluded that Ms. Spicer was residing at that location, and he explained to the roommate what the documents were.

In my opinion, there is a high probability of severe parental alienation when one parent unilaterally removes the child out of state. The documents that I reviewed appear to indicate that Ms. Spicer disregarded your Motion for a Temporary Injunction to Prevent Removal of the Child.

There are additional indications consistent with parental alienation. I reviewed an official document dated July 12, 2000 that indicated that Ms. Spicer did not attend

the mediation hearing. My understanding is that the agenda was to address child visitation. I am also extremely concerned about your statement that Ms. Spicer did not bring your daughter to the Tampa Bay area for court-ordered visitation during January-May 2002.

I reviewed the transcript of testimony dated September 18, 2000. During this testimony, Ms. Spicer's attorney agreed that Mr. Areizaga was the father of the minor child. However, the attorney stated Ms. Spicer's position that the Court did not have jurisdiction to award Mr. Areizaga visitation rights. During this proceeding, Ms. Spicer stated, "and for me to entrust my daughter to him knowing the anger and the bitterness and the rage that's involved in him still, I don't think that's wise on my part." She stated that the reason for this was that 1 month ago, you used a curse word when you left a message on the voice mail of the person she is dating. Ms. Spicer maintained that you threatened to kill her boyfriend. She stated that during a phone conversation with you, you said, "When are you going to stop? And do I have to kill someone to get you to stop?" Ms. Spicer stated that if the minor child spent a full weekend with the father "psychologically that would be devastating to her...she's not been away from me for a night ever, ever. She's never been away from me. For her to just be taken away, that's pretty traumatic for a 2 year old to be taken away from her mother." Ms. Spicer also stated that during a previous period, you spent 8 hours a day 3 days a week caring for the minor child while Ms. Spicer worked.

I am also concerned that during Ms. Spicer's August 7, 2002 testimony, she reported that she never used the name Areizaga on any documents regarding your daughter.

An additional concern relates to the infrequent phone contact that you have with your daughter. You stated that you rarely have phone contact, and you are frequently put on speaker phone; so the call is monitored.

I reviewed an order by The Honorable Charlene E. Honeywell dated October 17, 2002 which found Ms. Spicer to be in civil contempt "for her willful failure and refusal to take the action necessary to obtain a DSL line to facilitate computer video conferencing between the petitioner and the parties' minor child....the respondent shall be, and she is hereby adjudicated, to be in civil contempt for failing to provide daily telephone contact between the petitioner and the parties' minor child."

I was particularly concerned about the 2 telephone recordings that I listened to involving you and your daughter. I was concerned that you did not have the opportunity to speak with your daughter in private despite your repeated requests to take off the speaker phone. An additional issue is that your daughter repeatedly stated that you are not her real father.

In my opinion, the issues described above are consistent with the family dynamics of severe parental alienation. I believe that it is in the best interest of your daughter that her relationship with you be healed as quickly as possible.

Research has shown that father involvement has a very significant positive influence on most aspects of a child's development. Studies have shown that father's have a significant influence on the cognitive and motivational development of infants. One study showed that other adults

were not able to fill the void left by the children's fathers. The amount of paternal involvement has been shown to have a significant impact on intellectual competence. The capacity of children to adapt to the environment has also been proven to be promoted by both the amount of father involvement and the quality of the relationship. An additional relevant study indicates that irregular and poor visitation patterns were related to delays in language skills of children.

As children grow older, research continues to demonstrate that there is a significant relationship between positive father contacts, intelligence, achievement, and social maturity when children are 6-7 years of age. Another study found that positive paternal involvement significantly impacts children's self-control, self-esteem, life skills, and social confidence. A very interesting longitudinal study found that the highest predictor of empathic concern for others at age 31 was high level of father/child care at age 5. In summary, paternal involvement has been demonstrated to have a significant effect on a child's cognitive competence, mastery motivation, peer popularity, and social responsiveness.

The amount of paternal involvement has been shown to significantly impact the child's intellectual competence, secure attachment, and ability to adapt to the environment. The positive impact of fathers continues as children get older. For older children, paternal involvement has been demonstrated to have a positive impact on a child's intelligence, achievement, social maturity, self-control, self-esteem, social confidence, and empathic concern.

It is my hope that you are able to develop a healthy relationship with your daughter as quickly as possible. Please feel free to contact me if I can be of further assistance.

Sincerely,

/s/ Mitchell Kroungold
Mitchell Kroungold, Ph.D.
Licensed Psychologist
MK/dvs

APPENDIX J – Excerpt of Pre-Trial Conference Transcripts of the Proceedings on October 16, 2003, Pre-Trial transcript pages T-245 to T-257.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HDLLSBOROUGH COUNTY, FLORIDA. CIVIL ACTION
FAMILY LAW DIVISION

EFRAIN ARETZAGA
Petitioner,

Case No.: 00-4792
Division D

vs.

JODY SPICER,
Respondent.

EXCERPT OF PRE-TRIAL CONFERENCE

BEFORE: Honorable Charles Bergmann

DATE AND TIME: October 16, 2003,
4:24 p.m. 4:53 p.m.

REPORTED BY: Anita S. Ellababidy
Court Reporter Notary Public

Berryhill & Associates
501 East Kennedy Boulevard, Suite 1225
Tampa, Florida 33602
(813) 229-8225

APPEARANCES

On behalf of the Petitioner:
EFRAIN AREIZAGA, PRO SE

On behalf of the Respondent:
RONALD REED, ESQUIRE
202 South Westland Avenue
Tampa, Florida

On behalf of Mike Murdock and
Mike Murdock Evangelistic Association:
RICHARD VERNONN LEE, ESQUIRE
1001 3rd Avenue West
Suite 350
Bradenton, Florida 34205

* * * * * * * *

THE COURT: Well, I'm going to provide that discovery has to be completed by October 24th. And exhibits have to be provided five days prior to trial, that's the actual exhibits. If you're going to use a summary, comply with 90.956. Witnesses, documents, other evidence not clearly disclosed in the parties' pre-trial statement or permitted amendments thereto are not going to be admissible. And each of you is responsible for making sure that your witnesses are in attendance, which means, if they have to be subpoenaed, then you'd better subpoena them so that they're subject to subpoena and they are here.

Do all parties agree to waive the requirement of the record's custodian or any photographers, if we have any photographs on an issue?

MR. AREIZAGA: Mine have been admitted as by the respondent, pursuant to request for admissions.

MR. REED: Which is where I was trying to go before. If I may, Judge. I have to confess that Mr. Areizaga got me. He had sent out a series of requests for admissions, some 80 of them before you entered the stay order, staying discovery. And it got by me. And I need to file a motion, you know, showing good cause to allow me to file a response to those reguests for admissions. In all candor, I'm just overwhelmed with paperwork in this case; and it got by me.

MR. AREIZAGA: I object, Your Honor. The stay allowed 95 days extra for them to file a response to the requests for admission. Specifically, the admissions cannot be amended or -- or cannot be amended if it's supported by record. The record clearly identifies admissions and testimony by the respondents in the petitions the response to the petition, in her statements in hearings, her testimony in deposition are all the that corroborates these - the request for admission. The record clearly supports that. And for the Court to allow a motion at this point in time to amend or respond to the request for admissions, would be basically an abuse of discretion.

THE COURT: Well, Mr. Reed, we're here shortly before trial.

MR. REED: Uh-huh.

THE COURT: And if one party has submitted requests for admissions, and they prepare for trial, assuming that those matters are admitted, and then, shortly before trial, we find out that or maybe they're not admitted, isn't that prejudicial to the party –

MR. REED: No, not in this case, Judge.

THE COURT: — who propounded the admissions?

MR. REED: Not in this case, Judge. This is somewhat this is a unique case because of the way it's been going on for so many years and because of the snowfall the storm of paper that it's generated, far more than would have been generated in any other type of litigation, any other type of litigation I've been involved in. If, as Mr. Areizaga says, his requests for admissions are grounded on record evidence, transcripts, there's no prejudice at all, because he's got that. He's got the information. The prejudice, candidly, Judge, gets suffered by a child. And I'm sitting here; and if it made any difference, I'd be beating my breast. I mean, the reality is, it got by me, simply because it was one of a box-load of paper in this case (indicating). I don't see it as prejudicial, honestly. That's all I can tell the Court.

THE COURT: Well

MR. REED: It wasn't done, obviously, to spring a surprise on anybody. It was simply something that occurred.

THE COURT: Well --

MR. AREIZAGA: I object, Your Honor.

THE COURT: Here's what I'm going to do. You know, either party can file motions.

MR. REED: Uh-huh.

THE COURT: If you want to file a motion, then you can. But I'm not telling you that I'm going to relieve you from the admissions. I don't what good cause you have, other than what you have stated. And at this point, I don't know what the 85 admissions requested are. However, if some of those admissions, since this is at a very late date, would prejudice Mr. Areizaga, then I will tell you that my gut reaction would be that I am not going to shift the prejudice from Ms. Spicer to Mr. Areizaga and create a problem for him. Unless we fashion some other kind of remedy here, under the circumstances, and trying to be as even-handed as possible -- and I understand what you're saying. But on the other hand, you know, I can't prejudice Mr. Areizaga because of the fact that this slipped through the crack. It didn't slip through the crack on his side, but rather on your side. So I can't prejudice him because that occurred.

MR. REED: No, the responsibility is entirely mine. I accept that, Judge. And I'm not trying to shift it to Mr. Areizaga, certainly. I will file a motion and let the Court determine as it sees fit at the time.

THE COURT: All right. Which brings me back to the question, are we waiving record's custodians and photographers? Either both of you agree; or if one of you does not agree, then you-all have to bring the record's custodian –

MR. REED: No.

THE COURT: to authenticate and identify.

MR. REED: The trial's going to take long enough, Judge. We'll waive.

THE COURT: Do you

MR. AREIZAGA: Waive.

THE COURT: All right. Are you agreeing that you can use copies in lieu of originals as long as there's no –

MR. REED: Sure.

THE COURT: -- issue that the copy does not accurately portray the original?

MR. REED: Yes, sir.

THE COURT: All right. Who's going to be either one of you going to be providing the court reporter?

MR. AREIZAGA: I guess I am –

THE COURT: Okay.

MR. AREIZAGA: -- unless they want to pay for it.

THE COURT: Okay. Court reporter will be provided by the petitioner. All right. So the trial issues are custody, support. Are support arrears an issue?

MR. REED: Yes, sir.

THE COURT: Visitation is an issue?

MR. REED: Yes, sir.

MR. AREIZAGA:. Uh-huh.

THE COURT: The alimony doesn't apply. Equitable distribution doesn't apply. And both -- let's see. Attorney's fees and costs?

MR. REED: We're seeking them.

MR. AREIZAGA: Costs.

THE COURT: Respondent's claiming those.

MR. AREIZAGA: Costs, pursuant Florida Statutes, I'm also using a defense of fraud on the Court. Also have issues of name change of the parties' minor child, as well as sole parental responsibility -- issues of sole parental responsibility.

THE COURT: Has paternity ever been established? I don't have –

MR. REED: It's been acknowledged all along, Judge. I don't think there's an order.

THE COURT: Has a judgment ever been entered –

MR. AREIZAGA: No.

MR. REED: No.

THE COURT: — determining paternity?

MR. REED: No. That's not in dispute, Judge. That will be acknowledged.

THE COURT: That may be; but the question is, has paternity ever -- has there ever been a judgment determining paternity?

MR. REED: No, sir.

MR. AREIZAGA: No.

THE COURT: Interesting, considering the status of this case. Was the petitioner's name on the birth certificate?

MR. AREIZAGA: Yes, Your Honor, partially. She hyphenated the name.

THE COURT: What do you mean "partially?"

MR. AREIZAGA: Ms. Spicer took it upon herself to hyphenate the last name of the parties' minor child to include Areizaga, hyphen, Spicer. And — and --

THE COURT: Well, did you sign for the birth certificate?

MR. AREIZAGA: My signature is not on the birth certificate as it appears.

MR. REED: It was an acknowledgment in open court, Judge --

MR. AREIZAGA: By whom? Not –

MR. REED: -- at the very beginning of the case.

MR. AREIZAGA: Not by me.

THE COURT: Any order that ever reflected that?

MR. REED: Not that I can recall, Judge.

THE COURT: Well, all right. Either one of you believe that there are going to be unique issues of law or complicated issues of the law that you need to submit a trial memorandum on?

MR. REED: No.

THE COURT: All right. I'm going to put "N/A." Equitable distribution is not applicable. How many witnesses do you anticipate?

MR. AREIZAGA: I have listed 20 witnesses.

THE COURT: Twenty witnesses?

MR. AREIZAGA: Uh-huh.

THE COURT: What are they going to tell me?

MR. AREIZAGA: This case has been going for three years. I mean, you want me specifically to tell you? Motion pending for summary judgment here, as well. I included myself, the respondent, several pastors, uncle of the respondent, Mike Murdock, my sister, her husband, the respondent's roommate, a psychologist, investigator, process server, recording engineer, prior employers --

THE COURT: So what --
MR. AREIZAGA: -- the Post Office.

THE COURT: What is your sister and brother-in-law going to tell me about this relocation case?

MR. AREIZAGA: The relocation case -- I mean, there are several issues they will be testifying concerning my interaction with my daughter, as well Jody Spicer's relocation. They will be introducing the photo that they took that corroborates the date that Jody Spicer actually relocated, which was July 2nd of 2000. They will be –

THE COURT: Who is Anna Pitt, and what's she going to tell me?

MR. AREIZAGA: Anna Pitt is a roommate, also corroborating that Jody Spicer lived there during the time that she was served with a summons or a subpoena. She actually received the summons when this lawsuit was initiated.

THE COURT: Well, I don't need to hear from her because there's a return of service, presumably that was filed. If a summons was issued and it was served on the respondent, then the process server filed a return of summons.

MR. AREIZAGA: She's –

THE COURT: I'm not going to listen to somebody who comes in and testifies that she was there. That doesn't have that doesn't help this Court –

MR. AREIZAGA: She's –

THE COURT: -- resolve the issues that –

MR. AREIZAGA: She would be impeaching the testimony of Jody Spicer. Jody Spicer indicated she moved prior to being served with a summons. And therefore, she'd be –

THE COURT: Did the process server file a return saying that he personally served her?

MR. AREIZAGA: Yes. Personally served they personally served Anna Pitt. Anna Pitt received the summons. She transmitted the summons to Jody Spicer. She will be testifying that she was still living there at the time that she was served with that summons.

THE COURT: Is there a claim that this Court doesn't have jurisdiction over your client?

MR. REED: No, of course not.

THE COURT: Then she's filed pleadings. It doesn't make any difference. I'm not going to hear Anna Pitt. She submitted herself to the jurisdiction. I don't need Anna Pitt to come in and say that she received a summons, and she gave it to Ms. Spicer.

MR. AREIZAGA: No. What -- what she's going to be testifying is, she's an impeachment witness, as allowed by the rules. I'm allowed to impeach Jody Spicer who is testifying that she was — that she moved prior to being served with the summons. The law indicates –

THE COURT: It doesn't make any difference.

MR. AREIZAGA: In this case, the law indicates –

THE COURT: Jurisdiction.

MR. AREIZAGA: It's not a matter of jurisdiction. It's about impeaching her testimony. She took off to Texas to hinder my visitation schedule. That's an element of alienation of affection. And that's her testimony is essential to these proceedings.

THE COURT: All right. I will tell you in advance, Mr. Areizaga, that the rules of evidence provide that this Court has the right and the obligation and I'll give you the specific reference so you can do whatever research you deem necessary. But 90.612, which is part of the evidence code, says, the judge shall exercise reasonable control over the mode and order of interrogation of witnesses and the presentation of evidence so as to facilitate the effective interrogation and presentation and discovery of the truth; B, avoid needless consumption of time; C, protect witnesses from harassment or undue embarrassment, two, cross-examination of witnesses limited to the subject matter of the direct examination and matters affecting the credibility of the witnesses. The Court may, in its discretion, permit inquiry into additional matters. So I'm not going to listen. I'm not going to allow witnesses to testify that have nothing relevant, pertinent to say about the issues in this case. And I will repeat that the issues in this case are relocation, custody, visitation, child support, and child support arrearage. If the witnesses can't assist the tier of fact me in determining those issues, I'm not going to waste my time listening to them, because the judges in the family law division have I've got a constant load of 6- to 700 cases. And while you're entitled to due process, that doesn't mean

that you're entitled to use whatever time you feel you want to present testimony of witnesses who aren't helpful to the Court. You don't have the right, under the Constitution, under any of the statutes, under any of the Rules of Procedure, to waste the Court's time with witnesses who can do nothing to help or assist the Court in resolving the issues. You have the right to notice of the hearing. You have the right present your case, within limits, which means that I can't I can't take five or six days to hear 20 witnesses. And it sounds like a lot of them have absolutely nothing to do with the issues in this case. We're going to stick to the issues. We're not going to go down rabbit holes. We're not going to go down tangents. I'm telling everybody in advance, the same applies to you, Mr. Reed, and to you, Mr. Lee. There are also Rules of Judicial Administration that provide that I am to handle this case so that we have it expeditiously resolved. Also, Mr. Areizaga, I will read to you 90.6112, regarding cumulative testimony. And I'm not going to listen to two or three witnesses saying the same thing. If one witness says it, it doesn't make it any more truthful if five more come in and say the same thing.

MR. AREIZAGA: I understand that, Your Honor. I'm trying to prove a case of alienation of affection. If this Court does not take that as a serious issue in this case, then -- then, you know, what is my presentation in the case? I have nothing else. The fact is that the respondent alienated the affection of the parties' minor child, where the child hates -- hates me, doesn't know that I'm the real father. I don't see my child. These are factors that determine a. change of custody, which is a much more a greater burden than the one of initial custody.

THE COURT: Well, there's never been an initial custody determination.

MR. AREIZAGA: Exactly.

APPENDIX K – Petitioner's Memorandum for Trial without Attachments.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HDLLSBOROUGH COUNTY, FLORIDA. CIVIL ACTION
FAMILY LAW DIVISION

EFRAIN ARETZAGA
Petitioner,

Case No.: 00-4792
Division D

vs.

JODY SPICER,
Respondent.

MEMORANDUM FOR TRIAL

YOU ARE NOTIFIED hereby that the petitioner/father, EFRAIN AREIZAGA, has served this memorandum for trial in response and pursuant to court order rendered on June 13, 2003 and says as follows:

CHILDREN

1. CAILYN FAITH AREIZAGA- SPICER, parties' minor child 6 years old as of October 29, 2003.
2. The primary residential custody is in dispute, the respondent JODY SPICER presently has care of the parties' minor child.

3. The amount of child support is in dispute, since the respondent JODY SPICER, filed a false affidavit and has failed to reveal all sources of income.
4. The parties' minor child is cover under petitioner's health plan with CIGNA.
5. The parties' minor child has a skin disorder.
6. Visitation schedule for the non-custodial parent is in dispute.
7. Trial will cover all relevant factors pursuant to chapter 61 of the Florida Statues.

ATTORNEY'S FEES AND COURT COSTS

1. The estimate of attorney's fees and court costs to the conclusion of trial is approximately $19,000.00.
2. That the petitioner will offer testimony of cost at trial with related issues of intrinsic and extrinsic fraud on the court pursuant to the Florida Rules of Civil Procedures.

MISCELLANEOUS

1. The petitioner will not be amending any pleadings at this time, unless circumstances require an amendment circumstances require an amendment.
2. The petitioner will not be seeking any advisability of preliminary reference of issues to a Master or to mediation.
3. That the non-party deponent and respondent's lover MICHAEL DEAN MURDOCK from MIKE MURDOCK EVANGELISTIC ASSOCIATION has failed to appear for a deposition depriving petitioner of testimony at trial.
4. List of admission attached hereto.
5. Pending motion attached hereto.
6. Requests for judicial notice attached hereto.

7. Issues to be resolved: sole parental responsibility, primary residential custody, child support, name change of the parties' minor child, relocation, visitation, cost of litigation to include intrinsic and extrinsic fraud on the court.
8. It is estimated that petitioner will need two days to appropriately address the issues for trial.
9. Child support through the Central Government Depository is not needed.

OTHER ATTACHMENTS

1. A fully executed financial affidavit.
2. A child support guideline was not included, due respondent's failure to file an updated and truthful financial affidavit.
3. A schedule of exhibits for use at trial.
4. A witness list for trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I personally served a copy of this memorandum for trial on the respondent, JODY SPICER. By delivering said copy in person on this 16th day of October, A. D. 2003, to the respondent's attorney, RONALD S. REED, Esq., Attorney at Law, Ronald S. Reed, P.A., 202 South Westland Avenue, Tampa, Florida 33606.

/s/ Efrain Areizaga
Petitioner/ Pro Se
2205 E. 97th Ave. Tampa, Florida 33612
(813)389-3155

APPENDIX L – Respondent's Pre-Trial Memorandum for Trial without attachments.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HDLLSBOROUGH COUNTY, FLORIDA. CIVIL ACTION
FAMILY LAW DIVISION

EFRAIN ARETZAGA
Petitioner,

Case No.: 00-4792
Division D

vs.

JODY SPICER,
Respondent.

RESPONDENT'S PRE-TRIAL MEMORANDUM

COMES NOW the respondent, JODY SPICEiR, by and through her undersigned attorney, and files this pre-trial memorandum, and says:

A. ACTION:

1) The above styled cause is a paternity action.

B. THE CHILDREN:

1) Name and age of the child involved: CAILYNF. AREIZAGA-SPICER(d.o.b. 10/29/97).
2) The party who presently has primary residential care of the child: The respondent/mother has primary residential care of the child.

3) The amount of child support proposed for the child: The amount required by the statutory child support guidelines.
4) Whether or not the child is presently covered under any Medical Insurance policy: The child is not presently covered by medical insurance.
5) What, if any, special medical problems do any of the child have: None.
6) Suggested visitation schedule for non-residential parent: Alternating weekends with the visitation to commence in progressive stages, allowing the father to re-establish his relationship with the parties' child. Initially, the visitation should be for day times only, and once the child has developed a feeling of comfort with the father, then overnights. During the day time visitation periods, the child should be accompanied by an adult with whom the child is already familiar. Once overnight alternating weekend visitations are established, then the father should have alternating major holidays, several weeks each summer, and at such other reasonable times as the father may be able to travel to the child's state of residence. Visitation should not interfere with the child's schooling.
7) Is a custody investigation requested by either party? No.

C. ATTORNEY'S FEES AND COURT COSTS:

1) The amount of attorney's fees and court costs sought by either party from the other (estimate to conclusion of trial): The mother seeks an award of fees and costs from the father, estimated to conclusion of trial of $27,500.00.

2) Will testimony be offered on this issue at trial or at subsequent hearing9 The mother proposes that the court determine entitlement at trial, and if entitlement is found, that jurisdiction be reserved to determine amount and manner of payment.

D. MISCELLANEOUS:

1) Request for amendments to the pleadings: None.
2) Advisability of preliminary reference of issues to a Master: None.
3) Necessity for further discovery: None, unless the trial is continued.
4) List admissions and stipulations to avoid unnecessary proof:
A. The parties are the parents of the minor child.
B. Use of copies in lieu of originals.
5) List pending motions, attaching memorandums when anticipated to be necessary: No motions by the mother are presently pending.
6) Request for judicial notice: None.
7) List issues to be resolved, attaching memorandums when anticipated to be necessary:
A. Which of the parties shall have the primary residential care of their minor child.
B. The rights of secondary residential access to be granted.
C. The amount of child support to be paid.
D. Payment of any arrearages in child support that may be owed as of the date of trial.
E. Attorney's fees and costs.
8) Estimate time needed for trial: Three Days.
9) Is child support requested to be made through the SDU: Yes.

E. Attach to the memorandum the following:

1) A fully executed financial statement:
The mother's updated financial affidavit will be filed, however, attached hereto is a statement of expenses prepared by the mother together with a consumer credit counseling service.

2) A schedule of all photographs, exhibits and documentary evidence which the party intends to introduce at trial: child's report cards, all financial records showing parties' financial circumstances, medical records, all documents provided by the parties pursuant to discovery, all items listed on husband's exhibit list.

3) A witness list giving all names and addresses of all witnesses who may be called by a party:

The parties

Jeannie Callis, 306 Willow Street, Argyle, Texas 76226

Laura Thurman, 2012 West University Drive, Denton, Texas, 76202

Alice Cabrera, Argyle, Texas

Remi Needham, 310 Oak Street, Argyle, Texas 76226

Monica Melgar, 2012 West University Drive, Denton, Texas 76202.

Beth Caudill, The Little Gym, Denton, Texas

L-101

Christy Brown, Argyle, Texas
Pastor Randy White, Tampa, Florida

Jennifer Mallan, Without Walls Church, Tampa, Florida

All those named on husband's witness list.

4) A completed child support guidelines worksheet, if child support guideline apply: To be filed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the petitioner, Efrain Areizaga, this 16th day of October, 2003.

/s/ Ronal S. Reed
REED, ESQUIRE Ronald S. Reed, P.A.
202 South Westland Avenue
Tampa, Florida 33606
813-251-2162
Attorney for Mother
Florida Bar Number: 169272

APPENDIX M – Excerpt of the Trial Transcripts of the Proceedings on November 19. 2003, pages T-51 to T-54 and T-189 to T-196 (in said order).

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HDLLSBOROUGH COUNTY, FLORIDA. CIVIL ACTION
FAMILY LAW DIVISION

EFRAIN ARETZAGA
Petitioner,

Case No.: 00-4792
Division D

vs.

JODY SPICER,
Respondent.

EXCERPT OF TRANSCRIPTS OF PROCEEDINGS

BEFORE:	Honorable Charles Bergmann
TAKEN AT:	Hillsborough County Courthouse Tampa, Florida
DATE AND TIME:	November 19, 2003 Commencing at 9:00 a.m.
REPORTED BY:	Emily Boyd Court Reporter Notary Public

Berryhill & Associates
501 East Kennedy Boulevard, Suite 1225
Tampa, Florida 33602
(813) 229-8225

APPEARANCES

On behalf of the Petitioner:
EFRAIN AREIZAGA, PRO SE

On behalf of the Respondent:
RONALD REED, ESQUIRE
202 South Westland Avenue
Tampa, Florida

On behalf of Mike Murdock and
Mike Murdock Evangelistic Association:
RICHARD VERNONN LEE, ESQUIRE
1001 3rd Avenue West
Suite 350
Bradenton, Florida 34205

* * * * * * *

THE COURT: Any objection, Mr. Reed?

MR. REED: To what, sir?

THE COURT: Petitioner's Exhibit No. 2, which is apparently –

MR. REED: No, other than –

THE COURT: All right. It will be received as Petitioner's P-2. (Petitioner's Exhibit No. P-2 was received into evidence.)

MR. AREIZAGA: In the answer to Petitioner's amended petition, the Respondent has admitted that she has used — Admission No. 22, Respondent has repeatedly testified and used as a defense she lacks the financial resources to pay for her travel expenses, but she has spent enormous amount of money on elective cosmetic plastic surgery for her appearance.

Admission No. 24, that the Petitioner filed numerous motions for contempt against the Respondent. Respondent has repeatedly failed to provide visitation, telephonic communication, video-conferencing and engage in communication that to undermine and destroy the Petitioner's attempt to establish a relationship between the parties' minor child and the Petitioner.

Admission No. 26, that the Respondent has repeatedly failed to use the surname Areizaga in all that communication referencing the parties' minor child while living in the state of Texas, and in addition, the Respondent has admitted and testified to the same in open court.

At this time, I would like to admit Petitioner's Exhibit No. 9.

THE COURT: Any objection to Petitioner's Exhibit No. 9?

MR. REED: I have no legal basis to object, Your Honor.

THE COURT: All right. It will be received as P-9. (Petitioner's Exhibit No. P-9 was received into evidence.)

MR. AREIZAGA: I'm just going to go over several admissions, Your Honor. She admitted -- Admission No. 2, she refused to accept child support in a hearing on April

5, 2000, in a motion filed by myself requesting to pay child support and restrict her from moving to the state of Texas.

She's also admitted, No. 5, that she had move to Texas after being notified that Petitioner's motion to restrict relocation and Petitioner's summons, injunctions for that removal and other relief in the paternity suit.

That she had failed to attend mediation conference for the visitation purposes on July 12, 2000, thereby hindering Petitioner's efforts to visit with the parties' minor child, Admission 11.

Admission No. 12, in a hearing for temporary visitation, September 18, 2000, refused to provide visitation between the Petitioner and the parties' minor child, claiming the Petitioner was not legally the father.

Admission 15, that between January and September 2000, she made absolutely no effort to establish visitation, communication between the Petitioner and the parties' minor child.

No. 16, between January and September 2000, she failed to establish and facilitate, foster a nurturing, meaningful and loving relationship between the Petitioner and the parties' minor child.

18, that she failed to use the surname Areizaga-Spicer when referring to the child.

19, that she admitted the genuine or the recordings –

MR. REED: Judge, I think it's already in evidence.

THE COURT: It's in evidence, if you want to waste your time to review all of those.

MR. AREIZAGA: Very well. I would like to submit at this time Exhibit 56. It's a mandate from the Second District Court of Appeals as well as an opinion which reverses the contempt of court against me.

THE COURT: Any objection, Mr. Reed?

MR. REED: No, sir.
THE COURT: It will be received as P-56.
(Petitioner's Exhibit No. P-56 was received into evidence.)

MR. AREIZAGA: I would like to submit at this time Exhibit P-59. It's the birth certificate of my daughter.

THE COURT: What's the relevance of this, Mr. Areizaga? It's already been -- by granting the motion for summary judgment, we determined that you are the biological father.

MR. AREIZAGA: In my amended petition, I address the child's surname, which is –

* * * * * * * *

MR. AREIZAGA: Your Honor, according to the Second District Court of Appeals, 1988, Step versus Step, the best interests of the child is controlling in this case. That when a trial makes initial custody determination, the decision is purely based on the best interests of the child; that neither parent begins with an advantage over the other.

That the facts in this case are conclusively admitted pursuant to Rule 1.37 of the Rules of Civil Procedure regarding any matter in Petitioner's request for admission are conclusively established and cannot be withdrawn and amended if they are supported by the record. The records support the alienation of affection by Jody Spicer. That including in that elements of alienation, that the Respondent has permitted the parties' minor child to believe that the Petitioner is not her real father and that her current -- excuse me. Strike that. And that enjoining the father from telling the daughter that he is her biological father, denied the father, at he's not the biological father is denying father's due process right to maintain the parental relationship. The case of Kent versus Burdick, 591 So.2d 994, Florida First District Court of Appeals.

That Respondent Jody Spicer has permitted parties' minor child to believe that her surname does not contain the Petitioner's surname of Areizaga. The Third District Court of Appeals has concluded that to change the name of a minor son so that he will no longer bear his father's name is a serious matter, and such action may only taken when the Court firmly shows that change is required for the welfare of the child. That's Lazow versus Lazow, Third District Court of Appeals.

In addition, society has strongly suggested interest in the preservation of parental relationships and possible adverse effects on the relationship between the father and the child which is grounds for refusing to change the name to the mother's maiden name, absent showing best interests.

That the Respondent Jody Spicer has intentionally with malice and in bad faith alienated the affection between

the Petitioner and the parties' minor child by engaging in the following acts or omissions: Failure to provide telephonic communication pursuant to the court order; failure to provide visitation; failure to provide video conferencing; led the parties' minor child to believe that I was not the real father; let the minor child believe that her surname did not include Areizaga; relocated to the state of Texas after being properly served with the Petitioner's paternity suit to hinder my visitation effort; failure to allow Petitioner to participate in any child-rearing decisions concerning the parties' minor child due to the Respondent's failure to communicate with the Petitioner.

Changing custody, awarding sole custody to the mother can only be valid based upon -- I'm sorry. I spoke too soon. Awarding custody to the mother could be validity based on the finding of alienation by the father, the primary residential parent, to the extent that the child hated the mother combined with findings that the father denied unilaterally and reduced the mother's visitation when the father had custody. Scaringe versus Herrick, Second District Court of Appeals 1998.

Interference with non-custodial parent's visitation right is sufficient to warrant changing custody if such change is in the best interests of the child. That's Florida Statute 61.13, Subsection 4 and C; case law, Compton versus Compton, 701 So.2d 110, Fifth District Court of Appeals, 1997. Custodial parent has affirmative obligation to encourage and nurture the relationship between the child and non-custodial parent. Such duty is owed to both non-custodial parent and child. An obligation may be met by encouraging the child to interact with non-custodial parents, taking good faith measures to ensure the child's visit and otherwise frequent and continuing contact with the non-custodial parent and refraining from doing anything

likely to undermine the relationship of the naturally fostered by such interaction. Schultz versus Schultz, 581 So.2d 1290, Florida Supreme Court.

A custodial parent's frustration of visitation with the non-custodial parent may warrant a change in custody where there are aggravated circumstances such as alienation of affection, Brust versus Brust, 275 So.2d 598, Florida First District Court of Appeals, 1973.

The severe alienation of affection between the parties' minor child and the Petitioner affects the normal development of child psychologically and emotionally. That a court may order a change in primary residential responsibility to protect and promote the emotional health of the child. That's Family Law, Brenda Abrams, Edition 2003; and Mullen versus Sullivan, 467 So.2d 1093, Florida First District Court of Appeals; and Goldstein versus Goldstein, 1972, Third District Court of Appeals.

That the Florida Statute defines child abuse as the intentional affliction of mental injury. Moreover, that the aggravated child abuse statutes includes not only willful acts of commission, but also willful acts of omission and neglect that cause unnecessary and unjustifiable pain and suffering to the child.

That mental injury is defined by Florida Statutes. That the severe alienation of affection for approximately four years constitutes mental injury, and defined by the statute, injury to the intellect or psychological capacity of the child as evidenced by a discernible and substantial impairment of his ability to function within his normal

range of performance and behavior. State versus Dufresne, Florida Fourth District Court of Appeals, 2001.

That to allow the child to remain with the Respondent in this atmosphere of alienation is harmful to the child. Specifically, for a very severe long period of time. That the mental injury definition by the Florida Statute is clear, that intentional infliction of such mental injury by the Respondent is considered child abuse. That the child abuse statutes are applicable to these proceedings and therefore are not in the best interests of the child.

That for over three years, I endured bankruptcy, loss of business, financial hardship, and have gone through numerous proceedings in order to establish a normal relationship with my daughter. That the father should not have to go back every step of the way before he can establish a normal relationship with his daughter. This is especially true when the father has struggled for over four years and through numerous court proceedings just to see his daughter. From Kent versus Burdick, 591 So.2d 994, Florida First District Court of Appeals, 1991.

That the cost of these proceedings has exceeded in thousands of dollars, which I was unable to afford, which I was required to work overtime as much as possible, including having two jobs.

That the Respondent has committed fraud in these proceedings, has presented evidence that knowingly was false, that said evidence injured me and that the Court relied on said evidence as well to hold me in contempt, and I was required to pay money because of said false testimony.

That the cost of these proceedings should be awarded to me due to the failure of the Respondent to obey court orders. She's been held in contempt five times. Twice for video conferencing. One for failure to provide telephonic communication, and two for discovery, in addition to her false testimony. The Court should allow the costs regardless of whether or not I obtain custody.

I'm requesting shared parental responsibility and primary custody of the parties' minor child, because that's the best interests of the child at this time. That I am the parent who would most likely foster a nurturing relationship with the non-custodial parent. That the record reflects that the Respondent has not done that, and conclusively, has lied in many of these proceedings and provided false evidence. I rest.